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The Treatise of Stamp Laws
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A = Hugh Tilsley

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PREFACE

TO THE FIRST EDITION.

SHOULD inquiry be suggested by what inducement the writer was prevailed upon to undertake the compilation of this work, seeing that other publications upon the same subject, possessing claims to so much excellence, existed, it may be explained, that it was commenced many years ago, for the use only of himself and those associated with him in his official duties; with the absence of all intention of making it public in any shape, and without the slightest acquaintance with, or even knowledge of any of the productions alluded to, if, indeed, any of them had then existence; the task was from time to time laid aside from the pressure of business, and again resumed; and it was not until considerable advance had been made towards its completion that any idea was contemplated of placing it before the public; nor did the suggestion originate with the writer himself.

Although occasionally suspended, the intention of perfecting it was at no time abandoned; and without considering that he is called upon to express an opinion whether or not another work of the kind is now wanted, the writer deems himself justified in setting forth for public use the result of his labours, which he does in the hope that it will be found useful to those to whom information on the peculiar subject of which it treats is necessary or desirable.

Upon the plan of the work he may here be permitted to say a few words.

The enactments which relate to the present duties are to be sought for in the numerous Stamp Acts which have passed during a period of upwards of 150 years. To remedy the inconvenience attending this state of things, by collecting this scattered law, selecting from the various Acts the clauses relating to the different subjects, and arranging them in chronological order, under distinct heads, with reference to the matters to which they respectively apply,—thus, as it were, consolidating the provisions,—was his original design; and when it was first proposed to offer

the work to the public the mode of its arrangement had long been determined on, considerable progress having, as before observed, been made in the undertaking, but a revision of the plan has since occupied much attention The usefulness of the work to those for whom it is intended is, of course, the first object of the writer's care, and as a table of existing duties, for the purpose of constant and easy reference, was a material feature in its construction, it was resolved not to mar the usefulness of it by the interposition of other matter. The plan of juxta-position may be said to be, in general, a favourite with the writer, by whom it is adopted in all practicable cases, where perspicuity can be attained by it, but the mode, for the most part, pursued by those learned gentlemen who have hitherto written upon the same subject, of placing the law applicable to particular articles of duty by way of note to the items in the schedule, although it cannot affect the value of it, inconveniently interferes with the text It has, therefore, been deemed better to print the Table of Duties without this incumbrance, so far as it was possible, and, in accordance with the first intention of the writer, to set out the enactments relating to the several subject matters of charge under separate and

distinct heads, arranged in alphabetical order, accompanied by the cases, and such observations thereon as appeared to him to be called for

A judicious arrangement of the type might, probably, in a measure, obviate the inconvenience complained of, although it could not, in any case, remove it altogether, and in the present instance it would be found to exceed that in any other by reason of the greater quantity of matter introduced, no apprehension is, therefore, felt, that the arrangement of the work will, in this respect, be found fault with. No difficulty has been experienced in carrying out this design, where the law exclusively, or peculiarly, relates to particular duties, but as this is not the case throughout, a considerable portion of the law being, of course, applicable to nearly every item of duty, it has become necessary to include under the general head of "INSTRUMENTS," embracing several subdivisions, many enactments, and other matters, which could not, with convenience, be made to range under any other title; and again, the title of "STAMPS" has been adopted for the purpose of including various matters of a general character, respecting which the same difficulty arose The

necessity for this course, however, will involve no inconvenience in seeking for any information that may be required on points to which such matters relate, as the index will readily furnish proper references to the details contained in these general divisions.

The subject of this treatise affords a scope for speculative opinions in an eminent degree, but the writer has abstained from entering on that fruitful field, discussing such points only as arise from reported cases, and although his experience in matters of this kind, and his familiarity with the peculiar laws relating to them, ought in a measure, to qualify him for the performance of what he has undertaken, he has not the vanity to suppose that his work will be looked upon as an authority, especially by the more learned of the profession; his want of confidence in this, resulting, not only from the diffidence he feels as to his competency for the office, but from the circumstance of his not being of the superior grade in that profession, which he cannot but consider will materially affect the estimate of his production, whatever may be its real merit Be that, however, as it may, he thinks he is justified in so far

giving a character to his work, as to express his opinion that it may usefully be referred to for information upon the points on which it treats by members of any class in the legal body.

PREFACE

TO THE SECOND EDITION.

In preparing his work for official purposes only, according to the original intention of the writer, one object in view was to perfect a compilation of all enactments relating to the Stamp Revenue; and, although, on afterwards resolving to extend the sphere of his labours, by publishing the result, much that did not concern the public was omitted, yet it is considered that besides containing matter somewhat out of place, the former edition was still incumbered with much that was useless to the general practitioner. By omitting this foreign and unnecessary matter, to the extent of many pages in various parts of the book, the writer has been enabled to introduce into the present edition all the cases decided since the first publication, with many other important additions, without much increasing the volume in bulk

These additions will be found in nearly all the chapters of the work, but chiefly in those entitled, Conveyance on Sale, Mortgage, Instruments, and Legacy Duty

In placing before any class of persons a work upon a branch of science involved in their common pursuits, the author must be wholly indifferent both as to its fate and his own reputation, or be possessed of

more than an ordinary degree of confidence in himself, to be entirely free from apprehension as to the value that those, for whose use the work is more immediately intended, will put upon it. The writer's remarks in the former preface, referring to the want of confidence in his own sufficiency, and, at the same time, to a fancied motive for underrating his performance, have been variously characterized. As respects himself, they have been regarded as an assumption of modesty; and, again, as an excess of that genuine quality; as relates to others, they have been looked upon as indicating a rebuke not altogether misdirected; but, for the most part, as exhibiting, if not an erroneous impression, illiberal sentiments towards a learned and an honourable class of members of the profession.

With regard to the real estimate of the work—the view of the author himself, was, perhaps, in the main, tolerably correct. He did not expect that it would be referred to as an authority, in the strict sense and meaning of the term; nor does he apprehend that it has been, at all events in the higher quarters; but that reference has been made to it for information upon questions under discussion in Court, as well as under consideration at Chambers, he is well aware is the case.

As to the opinion of others—the author has seen reason for acknowledging his error, in ascribing to persons, of any degree, unworthy motives for undervaluing his work; and the simple confession of it will, probably, be the most acceptable.

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THE STAMP LAWS.

INTRODUCTORY.

THE design of this work being to convey useful, practical information, and to assist in leading to a correct interpretation of the statutes, by means of the decisions of the Courts of law thereon, a general history of the stamp laws will not be attempted; that subject will only be so far entered upon, as may be necessary for the development and proper understanding of the present state of the law. The chronological arrangement and analysis of the statutes, forming, as they do, a main feature of the work, will, in a measure, necessarily afford historical information.

When stamp duties first imposed.

Stamp duties were first imposed (*a*) by the 5 W. & M. c. 21, in 1694, but for a temporary period only; other statutes from time to time followed, increasing the existing duties, as well as introducing fresh subjects of charge; and the mode of taxation being found convenient, attended as it was with, comparatively, so trifling an expense in the collection, to say nothing of the exigencies of the State, such of the duties as were temporary only were, ultimately, made perpetual.

Cumulative duties and penalties.

The course was, when an additional or new duty was granted, to repeat, for the most part, all the enactments contained in former Acts that were essential for securing the duty, with occasionally, a fresh provision, a new stamp being requisite for the purpose of denoting the duty; thus stamps, and, with them, penalties for

(*a*) Certain duties on deeds enrolled, Crown and other grants, and on law proceedings, were imposed by the 22 & 23 Car. II. c. 9, for a period of nine years from the 1st of May, 1671; but they were not required to be denoted by stamps; they were collected by the officers of the different Courts and public departments, and paid over to a receiver appointed by the Crown. They were wanting, therefore, in that peculiar feature which is characteristic of those subsequently granted; and the circumstance of their having had existence can scarcely be said to affect the position assumed in the text.

omitting the use of any, and other enactments, continued to accumulate; but in order to avoid the great inconvenience of having so many impressions on the face of an instrument, as well as the necessity for providing and using so many dies, the Commissioners were authorized to use one stamp for denoting the duties under all or any of the different Acts; still, every separate duty was required to be expressed, which will account for the numerous small sums to be observed specified on most of the old stamps. This system continued until 1804, when all the duties then existing were, by the 44 Geo. III. c. 98, repealed, and new ones granted, as contained in different schedules annexed to the Act, most inconveniently, although systematically arranged. At the expiration of four years, nearly all the duties granted by this Act were repealed by the 48 Geo. III. c. 149, and others substituted. The comprehensive schedule to this latter Act, which bears evidence of great care and legal knowledge in the compilers of it, is the foundation of that in the present general Stamp Act, the 55 Geo. III. c. 184, by which statute it was repealed.

Consolidation of duties.

Ad valorem duties on conveyances introduced by 48 Geo. III. c. 149.

Ad valorem duties on conveyances upon sale, and in a few other instances, were first imposed by the 48 Geo. III. c. 149, accompanied by special provisions for protecting those on conveyances. The *ad valorem* duties introduced by the 55 Geo. III. c. 184, are those on settlements of money, warrants of attorney, and, it may be said, on leases, there being previously no *ad valorem* duty on a lease exceeding 30*s.* in respect of the rent reserved.

On settlements, &c., by 55 Geo. III. c. 184.

Provisions of all the Acts still in force.

When the cumulative duties payable under the various Acts from the time of William and Mary, ceased, by the operation of the 44 Geo. III. c. 98, and new consolidated duties were imposed, the statutes themselves were not repealed, but, on the contrary, the enactments by which the duties were secured, were expressly kept on foot; and so, again, on the repeal of the then existing duties, or any of them, by the 48 Geo. III. c. 149, and 55 Geo. III. c. 184, and any subsequent Act, the clauses of all the former Acts, consistent with any new enactments, were, likewise, continued, and directed to be applied for securing the new duties. This direction, for continuing the provisions of former Acts which were not, themselves, repealed, might be considered, in a great measure, if not wholly, unnecessary, because, in the interpretation of these statutes, passed *in pari materiâ*, all are to be taken together, as one code; new duties are merely a substitution for former ones, and must, *ex necessitate*, be subject to the same provisions. The Courts have put this construction upon the Acts

Statutes *in pari materiâ* to be construed as one code.

without regard to, (probably not being aware of,) the express enactment which retained the old laws. In the case *Re Cholmondeley* (*b*), Lord *Lyndhurst* went, somewhat elaborately, into the subject, in reference to a question of legacy duty, collating the various Acts, and pointing out the necessary connexion between the special provisions in former statutes, and the duties imposed by later Acts. Indeed, in all questions relating to stamp duties, this appears to be done by the Courts as a matter of course, without any reference to the clause keeping the former law alive.

Rule of construction of revenue and penal Acts.

It is a general rule that penal and revenue Acts are to be construed strictly, a liberal interpretation being given to words of exception (*c*). That every charge upon the subject must be imposed by clear, unambiguous words, is a principle too frequently inculcated in modern times to be readily forgotten (*d*). With regard to stamp duties, in particular, the language of the statutes is to be carefully attended to. The law upon the subject of stamps, to use the words of a learned Judge (*e*), is altogether *positivi juris*, it involves nothing of principle or of reason, but depends entirely upon the language of the legislature. The interpretation, however, ought to be dependent upon, and have regard to the obvious meaning and intention of the legislature. In a case before the Court of Exchequer (*f*), sent by the Master of the Rolls for the opinion of the Court, upon a point of law depending, wholly, upon the construction of a Stamp Act, their Lordships, in their judgment, observed, that to give effect to the meaning of the legislature, (by charging the duty in the particular instance,) violence must be done to the language of the enactment; and it being a question by what construction the least violence could be effected, they expressed an opinion upon the case in accordance with their view upon the latter point. This decision was adopted by the Master of the Rolls (Lord *Langdale*) on the hearing of a petition disputing the propriety of it, and, also, by the House of Lords, upon appeal.

A more recent case before the Lord Chancellor in Ireland of

(*b*) 1 C. & M. 149.

(*c*) *Warrington* v. *Furbor*, 8 East, 242; *Williams* v. *Sangar*, 10 East, 66; *Hubbard* v. *Johnstone*, 3 Taunt. 220; *Doe* v. *Manifold*, 4 B. & C. 243; *Brandling* v *Barrington*, 6 B. & C. 467; *Tomkins* v. *Ashby*, 6 B. & C. 541; *Cockburn* v. *Harvey*, 2 B. & Ad. 797; *Reed* v. *Wilmot*, 7 Bing. 582.

(*d*) See *Wroughton* v. *Turtle*, 11 M. & W. 561.

(*e*) *Taunton* in *Morley* v. *Hall*, 2 Dowl. 494.

(*f*) *Platt* v. *Routh*, 6 M. & W. 756. See this case under "PROBATE AND LEGACY DUTIES."

Cleland v. *Ker* (*g*), upon a question under the Irish legacy duty Acts, may, also, be referred to, in which his Lordship appears to have taken a very great deal of trouble in order to arrive at a proper understanding of the meaning and intention of the legislature, and which was done only by altering the language in no less than three different Acts, supplying words in two of them, and rejecting, altogether, from the other, an important part of a sentence; thereby charging with duty property, which would, otherwise, be exempt, by the operation of the rejected words.

On whom the *onus probandi* lies in objections for want of stamps.

It is incumbent on the party who seeks to charge an instrument with duty, to show, clearly, that it is within the Act (*h*); but this distinction is to be borne in mind, that where an instrument is, *primâ facie*, within the charge, it lies on the party contending for an exemption to show that the instrument is included in it (*i*).

The *precise* amount of stamp duty was formerly necessary to be denoted.

Formerly, it was essential that an instrument should be impressed with the stamp, or stamps, strictly applicable to it; a stamp of too high value, was as objectionable as one of too little value; the reason being, that the duties were appropriated, by the Acts by which they were granted, to particular purposes; and, if an improper stamp were used, the fund to which the instrument ought to have contributed was, thereby, deprived of that which belonged to it; but the reason ceased when all the stamp duties were made payable to one account. By the 43 Geo. III. c. 127, s. 6, it was provided, that a stamp exceeding the requisite value, should, if of the proper denomination required, by law, for the instrument, be valid and effectual. This was carried still further by the 55 Geo. III. c. 184, by section 10 of which it is enacted, that all instruments, for which stamps shall have been used of an improper denomination or rate of duty, but of sufficient value, shall be deemed valid and effectual, except where the stamps used shall have been, specially, appropriated to any other instrument, by having its name on the face thereof; so that an objection will not lie to an instrument, whatever date it may bear, that it is stamped with too high a duty; nor that the stamp upon it is of an improper denomination, unless such stamp bears upon

Not so since the 43 Geo. III. c. 127.

Stamps of improper denomination, but of sufficient value, valid; except where specially appropriated to instruments of another kind.

(*g*) 6 Irish Law and Equity Reports, 288.

(*h*) *Doe* v. *Amos*, 2 M. & R. 180; *Phillips* v. *Morrison*, 13 L. J. R. (N. S.) Exch. 212. In this case one of the learned Barons observed that the party must, clearly, show that the instrument fell within the Act; he must, so to speak, "hit the bird in the very eye," no intendments could be made in favour of the liability.

(*i*) *Chanter* v. *Dickinson*, 12 L. J. R. (N. S.) C. P. 147; 5 M. & G. 253.

it the name of another description of instrument. This remark must, however, be received with restriction. The Commissioners are at liberty to provide a die for any particular description of instrument (*k*); and, if this be done, no other stamp will be available for such instrument; at present there have been provided, under this authority, stamps for bills of exchange, promissory notes and receipts only; and, for these instruments, the stamps thus, exclusively, provided, must be used; but in other instances, although the Commissioners may provide dies to denote stamps for particular instruments, yet any other unappropriated stamps may be used for them.

Dies may be provided for particular instruments.

Robinson v. *Drybrough* (*l*) was a case under the old law, where a deed liable to duties amounting to 6*s.*, was impressed with a stamp of that amount appropriated to an agreement under hand only, and it was held to be insufficient.

Where a stamp duty is repealed, and another is granted, in lieu, an instrument executed, but not stamped, before the repeal, will be liable to the new duty, in the absence of any express provision to the contrary.

An instrument must be impressed with the duty payable at the time it is brought to be stamped.

A deed dated in March, 1787, was executed without a stamp, and was, subsequently to 1808, stamped with the duty payable under the 48 Geo. III. c. 149, the former stamp duties having been repealed; it was objected, that the stamp should have been that in force at the date of the deed, but the objection was overruled, by Mr. Justice *Lawrence*, at the trial, and, on a motion to set aside the verdict, was abandoned (*m*).

Again, in *Buckworth* v. *Simpson* (*n*), a demise dated 6th Dec. 1805, was stamped with 15*s.* (*o*) as an agreement, instead of 30*s.* the proper stamp for it, as a lease, at that period, but, shortly before the trial, it was stamped with 20*s.*, the duty chargeable on a lease, of the same kind, by the Act then in force; and the Court held that it was sufficiently stamped, having upon it the duty under the later Act. This case was elaborately argued; the 37 Geo. III. c. 136, was referred to, by way of interpretation. That Act authorized the Commissioners to stamp instruments on certain conditions; where an instrument was impressed with a stamp of a wrong denomination, but of sufficient amount, they were empowered, by section 1, on payment of the duty, by law, payable, *at the time when it was pro-*

(*k*) 3 & 4 Will. IV. c. 97, s. 16.
(*l*) 6 T. R. 317.
(*m*) *Doe dem. Dyke* v. *Whittington*, 4 Taunt. 20.
(*n*) 1 C. M. & R. 834; 5 Tyr. 344; 1 Gale, 38.
(*o*) *Qu.* 16*s*

duced, and a certain penalty, to stamp it with a proper stamp *then in use:* where an instrument was produced without any stamp, or with one of insufficient value, the Commissioners were, by the 2nd section, authorized to stamp it on payment of the duty, *by law, payable*, and a certain other penalty; but without designating, as in the previous clause, whether or not the duty should be that which was *then* payable; and it was argued, from such omission, that it was, only, in the former cases that the subsequently granted duty was payable; but Mr. Baron *Parke* observed, that the words in both sections were, "the duty, by law, payable," that all the duties imposed by former Acts were repealed, and could not, consequently, be "duties by law payable." Lord *Abinger* remarked, that the different sections of the Stamp Acts must have the same construction put upon them, and that the observation, that by such a construction the party would gain an advantage in the present case, was answered by this, that in every other instance no such advantage could be gained, inasmuch as the duties had been increased; the statute authorized the demand of the duties in force at the time when the stamp was affixed.

This construction has received further sanction, in the case of *Deakin* v. *Penniall* (*p*), in which it was held, that an agreement dated before the 7 Vict. c. 21, but stamped after the passing of that Act, was chargeable with the duty of 2*s*. 6*d*., thereby imposed, and not with that of 20*s*., previously payable.

Rules of evidence not affected by the stamp laws.

The stamp laws do not affect the rules of evidence; therefore, if on the trial of an action, or the hearing of a cause, the production of an instrument be not essential to the plaintiff's case, although it may be the foundation of his claim, or of the proceedings to establish it, it is not open to the defendant to object to the want of a stamp on the instrument; nor will the Court, on the suggestion of any party, require the production of it for the purpose of ascertaining whether it be duly stamped or not.

An instrument need not be produced merely to show that it is stamped.

In the case of *Huddleston* v. *Briscoe* (*q*), Lord *Eldon* went very fully into the question whether, where a contract is stated upon the pleadings, so as to render it unnecessary to be produced for the purpose of evidence, the Court ought, upon suggestion made, to require it to be produced, in order to see whether or not it is stamped; and expressed his decided opinion that the Court was not under the necessity of inquiring whether the agreement was stamped or not, unless the record was so framed as to compel

(*p*) 17 L. J. R. (N. S.) Ex. 217; 2 W. H. & G (Ex.) 320. (*q*) 11 Ves. 583.

the plaintiff to produce it. His Lordship also observed, that in a chancery suit the bill was not, in any correct sense, evidence, but was read as part of the answer, and that the answer was not, in the sense of the Act, evidence, but was read as admission dispensing with the necessity for evidence.

In *Israel* v. *Benjamin* (*r*), which was an action against the acceptor of a bill of exchange for 50*l.*, payable two months after date, with interest, Lord *Ellenborough* held, that the defendant, by reason of his having paid money into Court, thereby admitting the validity of the instrument, was precluded from taking any objection to the stamp; and the Court, on a motion for new trial, was of the same opinion. The objection offered was, that the bill was stamped for the principal sum only, and not for interest. At the trial Lord *Ellenborough* thought the stamp sufficient; the Court gave no opinion upon the point. It has, however, since been settled that no stamp is required for the interest. See *Preussing* v. *Ing*, under the head, "BILLS OF EXCHANGE AND PROMISSORY NOTES."

In *Thynne, Administrator, &c.* v. *Protheroe* (*s*), the defendant pleaded *non assumpsit;* and the letters of administration not being on a sufficient stamp, the plaintiff was nonsuited; but on a rule obtained for a new trial, on the ground that the objection was not open to the defendant upon that plea, but only on a plea disclosing the special matter, or a plea of *ne unques administrator*, the Court held that in this case, upon the general issue, the plaintiff had no occasion to produce the letters of administration at all, for the plea admitted that he was administrator; and if the defendant could insist on their production, it would be a means of getting the benefit of *ne unques administrator* upon the general issue.

And in *Lane* v. *Mullins* (*t*) which was an action on a bill of exchange, where the plaintiff obtained judgment on a demurrer, it was held that he was not obliged to produce the bill on assessing damages, merely to see if it was properly stamped.

See also "COPYHOLD" as to the effect of the stamp laws on evidence.

Instruments to be stamped according to their legal operation.

An instrument which, in terms, purports to effect a transaction, but which transaction fails by reason of something wanted to perfect the instrument in the form proposed, is not subject to stamp duty according to its purport and intended effect, but may be

(*r*) 3 Camp. 40. (*s*) 2 M. & S. 553.
(*t*) 1 Gale & D. 712.

liable according to its actual operation. Thus, an instrument purporting in terms to convey land, and containing a stipulation not to disturb the party in his enjoyment of the property, but having no legal operation, as a conveyance, not being a deed, was held to be chargeable with stamp duty as an agreement only (*u*).

A corollary to the foregoing would be that of a party "covenanting," in terms, by an instrument not under seal. But such cases are not to be confounded with those of instruments, perfect in themselves according to their tenor, and capable of effective operation in point of law, but failing for some cause *aliunde;* the stamp duty on these would be regulated by their contents, and the legal operation to be given to them, assuming it to have effect. The test in such a case is, whether the instrument, on reference to its contents, comes within the *description* of instrument charged under the particular head in the Stamp Act, and not whether, in point of fact, it has any actual operation according to its purport.

An instrument not stamped for its leading object, is not admissible for any subordinate purpose.

Nor does the stamp duty, in any such case, depend upon the use sought to be made of the document; if it be not stamped for the purpose for which it appears to have been made, it cannot be received in evidence in order to give effect to it for any subordinate purpose. This may be exemplified in the case of *Doe* v. *Stagg*, (see "SURRENDER,") where an unstamped instrument sought to be given in evidence in respect of a matter (a disclaimer) for which no stamp was required, was rejected because it imported, in terms, to be something (a surrender) for which a stamp was necessary; and which instrument, the Court observed, might probably show the former, if it were admissible.

Again, in an action of *debt* (*x*), a promissory note on an improper stamp, which was received in evidence on the trial in order to take the case out of the Statute of Limitations under the 9 Geo. IV c. 14, was, on motion, held by the Court not to be receivable for any purpose, Mr. Baron *Parke* observing that the general principle was, that every instrument ought to be stamped according to its legal operation; that this was clearly a promissory note, and could not be used as an agreement, or for any other purpose. See also *Horsfall* v. *Key* (*y*).

But in *Baker* v. *Gostling* (*z*) the plaintiffs were placed in a singular predicament by calling an instrument by a wrong name in their declaration, or rather, by incorrectly stating its operation,

(*u*) *Rex* v. *Ridgwell*, 6 B. & C. 665.

(*x*) *Jones* v. *Ryder*, 4 M. & W. 32.

(*y*) 17 L. J. R. (N. S.) Exch. 266.

(*z*) 1 Bing. N. C. 246.

viz., by alleging an assignment, the deed being an underlease, the counterpart of which was produced, duly stamped. This deed, because it was declared on as an assignment, and was assumed not to be stamped to answer that description, the Court refused to look at. See the propriety of this decision controverted under the head "INSTRUMENTS," 8. A document cannot of course be made liable to a particular duty by reason of any *name* which the parties may choose to give it.

The amount of duty to be regulated by the contents of an instrument.

It may, certainly, be stated, in general terms, to be the policy of the stamp laws, that an instrument shall be subject to *ad valorem* duty by reference only to its contents, without regard to extrinsic matters; that it shall, in fact, speak for itself. In the case of a Conveyance, upon sale, it is, especially, provided that the duty shall be payable on the consideration *expressed*, means being taken for the security of the revenue in this respect. (See "CONVEYANCE UPON SALE.") In the instance of securities no similar provision would seem to be necessary; and if there be any doubt as to the uniformity of the rule, it would appear to be in the case of a Lease, the duty being payable on the amount of the rent, without requiring such rent to be specified; and a construction has been put upon the Stamp Act, in reference to leases, favouring the exception. See "LEASE," and "INSTRUMENTS," 4. The Courts have, however, widened the exception, which is rather to be regretted. The recital in an instrument of a fact governing the duty, is to be taken as evidence, *primâ facie*, but where the recital is omitted, other proof of the fact has been allowed. See "MORTGAGE" and "BOND." But if one thing be more clear than another, it is that the duty cannot depend upon a contingency; it must be fixed and determined, and must attach, at the time of the completion of the instrument, and not be affected by any subsequent matter, the strict law requiring that the paper, &c. shall be stamped before it is written upon. The case of an actual demise at a rent to be fixed by a third person, might suggest a difficulty on this point, but this is not admitted to be an exception, as there can be no question that such an instrument would be liable as a lease not otherwise charged; and in the instance of probate duty, where a mistake has been made as to the fact which regulates the amount of duty, special provision will be found for rectifying the stamp, whether it be of too high or too low a value. See the remarks on this subject under the head "MORTGAGE" (*a*).

The duty must be ascertained before the instrument is executed.

(*a*) A due consideration of this doctrine could scarcely have failed to influence Mr. Justice *Burton* in his decision of the case of *Hood* v *Hood*, 1

Opinions and practice of the Commissioners.

The legislature has not thought proper to invest the Commissioners with authority to decide any question relating to stamp duties, nor, by any act of theirs, (except in the instance of denoting stamps, in particular cases, specially provided for,) to preclude inquiry as to the sufficiency of the stamp on any instrument, and, in England, the Courts are not in the habit of referring to the Stamp Office on any question before them, Lord *Eldon*, however, on one occasion, having taken an opportunity of ascertaining the opinion entertained by the Office, in a particular case, spoke of it, in giving judgment, as coinciding with his own view, and Judges of great eminence have, in several instances, alluded to the uniform course of the Stamp Office, for a long series of years, in carrying out the particular provisions of an Act of Parliament, as a practical commentary on the law, although not conclusive as to the interpretation of it. On this subject the present Lord Chancellor for Ireland remarked in the case before alluded to, *Cleland* v *Ker*, that "he felt, from his own long experience, that it very seldom happened, that late discoveries of error in a practice, long established, were well founded, and that the practice which had prevailed for any length of time, generally, had reason to sustain it" See also Mr Baron *Pennefather's* remarks in the cases of *Nagle* v *Ahern* (*b*), and *Booth* v *M'Gowan* (*c*)

Cr & Dix, Cir Rep 413, and to lead to a different conclusion It was not intended to refer to that case in this work, the statute upon which the question in it arose having been since repealed, but permitting it to stand in the books, without notice, might lead to a belief that it was acquiesced in, and so the decision might be considered as tending to establish a rule, in the construction of the Stamp Acts, at variance with those for the interpretation of other statutes

The 5th and 6th Will IV c 64, s 1, recites, that "it is expedient that all deeds, bonds, or other instruments, made in Ireland, for the purpose of submitting matters in dispute to arbitration, and all awards thereupon, should be exempt from Stamp Duty," and it enacts, that 'from and after the passing of this Act, all deeds, bonds, agreements, or other instruments, made and executed in Ireland, whereby any person or persons shall become bound, or agree to submit any matter in dispute, to arbitration and also, all awards made in pursuance of any such submission as aforesaid, shall be, and the same are hereby exempted from all Stamp Duty whatsoever" The case in question was that of a bond, and an award, made before the passing of that Act, and upon which, therefore, Stamp Duties had already accrued, and which by the laws in force ought to have been stamped, but the learned Judge determined that these instruments were exempt from duty, that, from the very general terms used by the legislature, it must have been the intention to exempt instruments made, as well before, as after the Act It is difficult to reconcile this opinion with the words of the statute, and, with respectful deference, it is submitted, that it is altogether opposed to the obvious meaning of the enactment Moreover, the principle it involves is practically, incapable of application, in the extent which must be given to it, if it be admitted at all

(*b*) 3 Ir L R 41

(*c*) 1 Long & Town 273

It has been remarked, that, although the established practice of the Stamp Office has been, occasionally, referred to by the Courts, it did not follow that the public should, implicitly, rely upon the advice which might be obtained there; that numerous instances were to be found where the Commissioners had mistaken their duty, and affixed an improper stamp, and that even on a penalty (*d*). Observations of this kind convey, altogether, an erroneous idea of the province, and, (at least, in London,) the practice of the Stamp Office. Of course, neither the Commissioners, nor their officers, are responsible for the consequences of a deficiency of duty on any instrument stamped after it is executed; for, although they refuse to impress a duty which is palpably insufficient, they, in cases of doubt, allow parties to exercise their own discretion, at the same time not withholding advice; and it may reasonably be presumed, that wherever a doubt is, really, entertained upon any point, a recommendation is never given to take the lower stamp. It, certainly, is, by no means, probable, that, in any instance, where a question is suggested, whether the stamp should be the common deed duty, or one of less amount, a party is advised to be content with the latter, if the point be one of real difficulty; but, considering the imperfect knowledge which is sometimes acquired by a cursory perusal of a deed taken to be stamped, it is not to be wondered at that the officer should be misled in forming his judgment, more particularly if the instrument be produced by a clerk who is incompetent to render any assistance in the interpretation of it; and, with the exercise of all the vigilance that the opportunity admits of, a particular provision, influencing the amount of stamp duty, will, occasionally, escape notice. In all cases it behoves those who attend with instruments to point out any such clauses contained in them, and thus to be a check against any improper stamp being impressed.

In a case of this kind, where a plaintiff had been nonsuited because a deed, held to be liable to 35*s*., was stamped with 30*s*., as a lease, the Court of King's Bench, instead of discharging a rule which had been obtained to set the nonsuit aside, as they were about to do, made it absolute, on payment of costs as between solicitor and client, upon its being stated, (whether correctly, or not, it may be doubtful,) that the stamp had been impressed by the advice of the Stamp Office (*e*).

(*d*) Mockler's Stamp Laws, xxxiii.
(*e*) *Clayton* v *Burtenshaw*, 5 B. & C. 41.

Stamp obliterated.

Where, in an ejectment, a deed was produced, dated in 1806, which bore the appearance of having had a stamp upon it, but the parchment was so much worn and obliterated that the nature and amount of the stamp could not be ascertained, the Court agreed that it was admissible, holding that the burden of proof was upon the party attacking the deed, which presented the appearance of having been properly executed. In answer to the *primâ facie* objection, the other circumstances must be taken into consideration, *viz.*, the appearance which the parchment presented of having had a stamp upon it, and, also, the interest of the parties concerned in taking care that the deed had been correct in this particular (*f*).

This case must be received with a due consideration of all the circumstances attending it; it was not intended as an authority on all occasions where a stamp is destroyed. The decision was founded in reason. Here was an old deed which, from want of due care, had become almost illegible; the deed itself, and the stamp upon it, were in a state of premature decay; there was evidence of a stamp having been impressed, and, under the circumstances, the Court was justified in presuming it to have been correct. Except in cases of a similar description no such presumption is warranted; but, on the contrary, the suspicion naturally arises, where the stamp is obliterated, that such stamp was improper, unless the deed itself, as well as the stamp, appears to have undergone a material change, either from natural decay, or some *accidental* cause.

Trover will lie for an unstamped instrument if it can be stamped.

An unstamped instrument, if it be one that can be made available, by being stamped, on any terms, may be the subject of an action of trover (*g*).

(*f*) *Doe dem. Fryer* v. *Coombes*, 12 L. J. R. (N. S.) Q. B. 36; 3 A. & E. (N. S.) 687; 3 Gale & D. 193.

(*g*) *Scott* v. *Jones*, 4 Taunt. 865; *M'Leod* v. *M'Ghie*, 2 Scott, N. R. 604.

Admissions to Corporations or Companies.

5 W. & M. c. 21.
9 Will. III. c. 25.

Duties were by these Acts granted on admissions into corporations in England, Wales, and Berwick-upon-Tweed.

5 Geo. III. c. 46.

Repealing the said duties and granting others in lieu, charging the same on the entry of admission, in the court book, roll, or record.

Sect. 4.—Any town-clerk, or other proper officer, neglecting or refusing to make the entry, minute, or memorandum of any such admission, upon the proper duty, in the court book, or on the roll, or record of the corporation, within one month after the admission, to forfeit 10*l.* Omitting to enter admission on stamp.

Sect. 38.—Public officers having in their custody any books, papers, &c. refusing to permit any officer of stamps to inspect them, to forfeit 50*l.* See "Public Officers." Refusing inspection of books, &c.

23 Geo. III. c. 58.	44 Geo. III. c. 98.
37 Geo. III. c. 90.	48 Geo. III. c. 149.

By these Acts other duties were from time to time granted, all of which have been repealed.

55 Geo. III. c. 184.

By this Act the then existing duties were repealed, and the present duties granted, (for which, see Table,) to be collected, &c. under the provisions of the former Acts (s. 8). Present duties.

5 & 6 Will. IV. c. 76.

To provide for the regulation of municipal corporations in England and Wales. Municipal Corporation Act.

Sect. 1.—All laws, statutes, and usages, charters, grants, and letters patent relating to the boroughs therein referred to, inconsistent with, or contrary to the provisions of this Act, repealed. Charters repealed.

Sect. 3.—No person to be elected, made, or admitted a burgess or freeman of any borough by gift or purchase. No freedom by gift or purchase.

Sect. 4.—Every person who, if this Act had not been passed, would have enjoyed as a burgess or freeman, or might hereafter have acquired (subject to the provisions of the 2 Will. IV. c. 45, the *Parliamentary Reform Act*), in respect of birth or servitude, as a burgess or freeman, the right of voting for members of Parliament, to be entitled to enjoy or acquire the same right as if this Act had not been passed. Privilege of freemen to vote continued.

Sect. 5.—The town-clerk of every borough to make out a list, to be called Freemen's roll.

"The Freemen's Roll," of all persons already admitted, and upon any future claim to be admitted a burgess or freeman, for the purposes aforesaid, in respect of birth, servitude, or marriage, being established, as therein mentioned, the claimant to be admitted and enrolled on the freemen's roll.

Exemption from duty.

Sect. 22.—No stamp duty to be payable in respect of the admission, registry, or enrolment of any burgess according to the provisions of this Act.

1 & 2 Vict. c. 35.

Further exemption.

Reciting that the right and privilege of freemen of the cities and boroughs in England, who have acquired their freedom by birth or servitude to vote for members of Parliament, have been confirmed by statutes, and that it is expedient that all impediments to the admission of persons entitled to the freedom of corporations should be removed, and that the stamp duty payable on such admission should be abolished.

It is enacted, that no stamp duty shall be chargeable on the admission of any person entitled to take up his freedom by birth or servitude in any city or borough in England, returning a member or members to serve in Parliament.

NOTE.—This enactment was rendered necessary by the omission to extend the exemption contained in the 5 & 6 Will. IV. c. 76, to the admission of persons to be put upon the Freemen's Roll; such exemption being confined to *Burgesses* admitted under that Act. Admissions to all corporations and companies, which do not confer the right of voting for Members of Parliament, although the borough may return Members, are still chargeable with duty.

Ireland.

For the special provisions for securing the stamp duties on admissions to corporations and companies in Ireland, see 56 Geo. III. c. 56, ss. 113 and 114, "APPENDIX."

Advertisements.

10 Anne, c. 19.	29 Geo. III. c. 50.
30 Geo. II. c. 19.	44 Geo. III. c. 98.
5 Geo. III. c. 46.	55 Geo. III. c. 185.
20 Geo. III. c. 28.	

By the above-mentioned Acts duties on advertisements were, from time to time, granted in Great Britain, and provisions enacted relating thereto; all which have been repealed.

3 & 4 Will. IV. c. 23.

By this Act, the duties now payable in Great Britain and Ireland, on advertisements, were imposed, for which see TABLE.

The Act contained, also, provisions for securing the duties, but which were repealed by the next-mentioned Act.

6 & 7 Will. IV. c. 76.

For the enactments relating to the duties on advertisements in newspapers, see "NEWSPAPERS."

Copies of works, not newspapers, containing advertisements, to be sent to the Stamp Office and the duties paid.

Sect. 21.—One copy of every periodical literary work or paper, (not being a newspaper,) containing or having published therewith any advertisement, to be brought, together with the advertisements, if published in London, Edinburgh, or Dublin, within six days, to the head office in the nearest of such cities, and the title thereof, the names of the printer and publisher, with the number of advertisements, and the amount of the duty thereon to be registered, and such duty to be then and there paid; if published elsewhere, the same to be brought within ten days to the distributor for the district in which the same is published, to whom the duty is to be then paid.

Penalty for default 20*l.*

In default of payment within the respective times mentioned, every person concerned in printing or publishing such work, or paper, and the publisher of such advertisements, to forfeit 20*l.*

In any proceedings for the recovery of such penalty or duty, the proof of payment to lie upon the defendant.

As to the proceedings for penalties, see "NEWSPAPERS."

Affidavits.

5 W. & M. c. 21.	35 Geo. III. c. 30.
9 Will. III. c. 28.	44 Geo. III. c. 98.
32 Geo. II. c. 35.	48 Geo. III. c. 149.

By the above Acts duties were granted on affidavits.

55 Geo. III. c. 184.

The duties then payable were repealed, and others granted in lieu, some of which have been since repealed. See TABLE.

Before whom affidavits relating to stamp duties to be made.

Sect. 52.—All affidavits and affirmations required by this, or any former or future Act, or which shall be required by the Commissioners of Stamps to be made for their satisfaction, of or concerning any facts or circumstances upon which they are to execute the powers vested in them by this or any other Act, or for the verification of any accounts of or concerning the duties under their management, or for any other purpose relating to such duties, shall, in all cases not otherwise expressly provided for, be made before the said Commissioners, or one of them, or a Master in Chancery, ordinary or extraordinary, in England, or a person duly commissioned to take affidavits by the Court of Session or Exchequer in Scotland, or a Justice of the Peace in Scotland.

Authority to take affidavits.

Sect. 53.—Persons before whom any affidavit or affirmation is required to be made by this, or any former, or any future Act, relating to stamp duties, may take the same, and administer the proper oath, or affirmation.

Perjury.

Any person making false oath or affirmation in any such case, to be subject to the pains and penalties of perjury.

5 Geo. IV. c. 41.

Duties on certain affidavits repealed.

By this Act (for repealing the stamp duties on law proceedings) the duties on affidavits to be filed, read, or used, *in actions or suits* in the Courts of Admiralty and Ecclesiastical Courts, and in the superior Courts of law and equity in England or Ireland, or before any Judge thereof, &c.; and affidavits to be filed, read, or used in any inferior Court in England or Ireland, or in the Court of Exchequer in Scotland, were repealed.

3 & 4 Will. IV. c. 97.

The commissioners may appoint their officers to take affidavits.

Sect. 22.—The Commissioners of Stamps, or any two of them, may, by writing under their hands and seals, appoint any officer under them, to take and receive any affidavit or affirmation now by law authorized to be made before any one of them; and every such officer may take and receive the same. Persons making false oath in any such cases to be subject to the pains and penalties of perjury.

5 & 6 Will. IV. c. 62.

In revenue matters the

Sect. 2.—In any case where by any Act or Acts made or to be made, relating to the revenues of customs, or excise, the post-office, the office for stamps and

taxes, &c., or by any official regulation in any department, any oath, solemn affirmation, or affidavit, might, but for this Act, be required, the Commissioners of the Treasury, or any three of them, may, if they shall think fit, by writing under their hands and seals, substitute a declaration to the same effect as the oath, &c., and the person who might, but for this Act, be required to take such oath, &c., shall, in the presence of the person empowered to administer the same, make and subscribe such declaration.

Treasury may substitute declarations for affidavits.

Sect. 3.—When the declaration shall have been so substituted, the same to be published in the London Gazette; and from and after twenty-one days after such publication, the provisions of this Act to extend to every case specified therein.

Substitution to be published in the Gazette.

Sect. 4.—After the expiration of such twenty-one days no person to administer or receive any oath, solemn affirmation or affidavit, in lieu of which such declaration shall have been substituted.

No oath to be administered after such publication.

Sect. 5.—Any person making and subscribing any such declaration, and therein wilfully making any false statements, as to any material particular, to be guilty of a misdemeanor.

False declaration to be a misdemeanor.

4 & 5 Vict. c. 34,

To explain and amend 5 Geo. IV. c. 41.

Sect. 1.—The duty of 2*s.* 6*d.* by the 55 Geo. III. c. 184, imposed on affidavits to be filed, read, or used in any of the Courts at Westminster, or of the Great Sessions, or Counties Palatine, or before any Judge or Master, or other Officer thereof, or before the Lord Chancellor, or Lord Keeper or Commissioners of the Great Seal in matters of bankruptcy, or lunacy, to be adjudged, deemed and taken to have been repealed at the time of the passing of the 5 Geo. IV. c. 41, upon all affidavits, whether to be read, filed, or used in the said Courts, or before the said Judges, Commissioners, or Officers, *in any action or suit, or otherwise* howsoever. And all affidavits so read, filed, or used, without being stamped, since the said Act, to be deemed to have been lawfully read, &c. as if no stamp duty had been imposed.

Explaining 5 Geo. IV. c. 41, as to the repeal of stamp duty on affidavits.

Sect. 2.—Nothing in the said Act of 3 [5th] Geo. IV. to be deemed to repeal any part of the 55 Geo. III. c. 184, imposing a duty upon affidavits, other than those to be filed, read, or used in the said Courts, and before the said Judges, Commissioners, and Officers. See TABLE for the duties now payable on affidavits.

By way of explanation it may be observed, that by the 55 Geo. III. c. 184, in the *first* part of the schedule, a duty is imposed on any affidavit "*not made for the immediate purpose of being filed or used in any Court of law or equity,*" and in the *second* part of the schedule a duty is imposed, as on a law proceeding, upon any affidavit "*to be filed, read, or used in any of the Courts of law or equity*" therein mentioned; by the 5 Geo. IV. c. 41, the duty is repealed on affidavits to be filed, read, or used *in actions, or suits,* in any of the Courts; the object of that Act being to repeal the stamp duties on all proceedings in actions or suits; the duties, therefore, remained on affidavits filed, read, or used in any Court, if not in *an action or a suit.* In the matter of an arbitration

Explanation as to the duties repealed.

between *Templeman and Read* (*a*), on an application to set aside an award, the affidavits not being on stamps were objected to, and the rule was enlarged to enable the party to procure fresh ones. And in *Ex parte Watkins* (*b*), an application by an attorney to be struck off the roll was, for the same reason, refused; but the 4 & 5 Vict. c. 34, was passed, which had the effect of repealing the duties on all affidavits to be filed, read, or used in any of the Courts, not in actions or suits, and in lunacy and bankruptcy, by declaring that the same shall be deemed to have been repealed by the 5 Geo. IV. c. 41.

Affidavit on replevin bond.

By the 11 Geo. II. c. 19, s. 23, it is required that officers having authority to grant replevins shall take a bond in double the value of the goods distrained, "such value to be ascertained by the oath of one or more credible witness or witnesses." In the margin of a replevin bond there was written to the effect following, *viz.*: "*W. G.*, of, &c. maketh oath and saith, that the goods and chattels mentioned in and referred to by this bond are of the full value of, &c. Dated the 3rd day of May, 1819. "*W. G.*"

It was objected that this was an affidavit, and ought to have been stamped; and moreover that it was irregular for want of a jurat; but the Court, on motion, held that no affidavit was necessary; the use of the memorandum was to show to the sheriff that the officer had done his duty; if there had been no affidavit, and the sheriff had shown that the oath had been taken, it would have been sufficient; it would be overstraining the practice to say that such a writing as the present required an affidavit stamp (*c*).

(*a*) 9 Dow. 962.
(*b*) *Ib.* 974.
(*c*) *Dunn* v. *Lowe*, 4 Bing. 193; 12 Moore, 407.

Agreements.

23 Geo. III. c. 58.

By this Act a duty of 6*s.*, in Great Britain, was granted upon every agreement, whether only evidence of a contract, or obligatory upon the parties from its being a written instrument.

Sect. 3.—Not to extend to memorandums of insurances by certain Corporations.

Sect. 4.—Nor to any of the following, *viz.*: Agreements for leases at rack-rent under 5*l.*; for the hire of any labourer, artificer, manufacturer, or menial servant; for or relating to the sale of goods, wares, or merchandises; nor where the matter does not exceed the value of 20*l.*

Sect. 5.—Provided: No agreement not stamped, to be deemed void, in case the same be stamped, or the duty paid and a receipt given thereon by the proper officer for the duty, within twenty-one days after the same is entered into. See 7 Vict. c. 21.

Twenty-one days allowed for stamping.

32 Geo. III. c. 51.

Sect. 1.—Not to extend to charge letters passing by the post between persons carrying on trade in this kingdom, and residing fifty miles from each other, by reason of such letters containing agreements in respect of any merchandise, notes, or bills. See the Table for the present exemption.

Not to extend to certain letters.

35 Geo. III. c. 30.	44 Geo. III. c. 98.
37 Geo. III. c. 90.	48 Geo. III. c. 149.

Additional duties of 1*s.* and 2*s.* were granted by the two first-mentioned Acts respectively; and by each of the two latter Acts the existing duties were repealed, and a new duty of 16*s.* (besides progressive duties) granted in lieu.

55 Geo. III. c. 184.

The duties payable under the 48 Geo. III. c. 149, were by this Act repealed, and others imposed in lieu, *viz.*: 20*s.* where the agreement contained not more than fifteen folios, and 35*s.* where the number of words exceeded that quantity, with progressive duties where it exceeded thirty folios. See the Table for the present duties.

Sect. 9.—The provisions of former Acts to be applied only to such agreements as are charged with 20*s.*, and agreements charged with 35*s.* to be subject to the same regulations as deeds.

Note.—The provisions here referred to relate to the stamping of agreements within twenty-one days, the period for which is now limited to fourteen days, by the 7 Vict. c. 21.

9 Geo. IV. c. 14.

Exemption. Lord Tenterden's Act.

This Act (commonly called Lord Tenterden's Act) "for rendering a written memorandum necessary to the validity of certain promises and engagements," *viz.* to take cases out of the Statute of Limitations; to charge persons upon promises made after full age to pay debts contracted during infancy, and upon representations made as to character; and to extend the Statute of Frauds to the cases of executory contracts for the sale of goods, enacts,

Sect. 8.—That no memorandum or other writing made necessary by this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

7 Vict. c. 21, s. 16.

New duties.

By this Act, a duty of 2*s.* 6*d.* is substituted for that of 20*s.* on certain agreements granted by the 55 Geo. III. c. 184, in Great Britain, and 5 & 6 Vict. c. 82, in Ireland. See TABLE.

Sect. 3.—The powers, provisions, &c. of former Acts relating to stamp duties in Great Britain and Ireland respectively, to be of full force, and applied to the new duties, where no express provision is made by this Act.

Time for stamping agreements.

Sect. 5.—If any agreement, chargeable with duty under this Act, not written on paper, &c. duly stamped, be brought to the Commissioners of Stamps and Taxes, or any of their Officers authorized to receive the same, together with the duty payable thereon, within fourteen days after the same shall have been entered into, the Commissioners are required to stamp the same without the payment of any penalty. If not brought within that period a penalty of 10*l.* to be paid on stamping it.

Instruments chargeable as agreements.

AN INSTRUMENT must be under hand only, (that is, not under seal (*a*),) to be chargeable with stamp duty as an agreement. Such writings, previously to the 23 Geo. III. c. 58, were not subject to any duty, if they were used as evidence merely, and not as obligatory; but by that statute, as well as the subsequent Stamp Acts, duty is charged upon every agreement, whether it be "only evidence of a contract, or obligatory upon the parties from its being a written instrument" (*b*). And in proceeding to ascertain whether a document be liable to duty under this head of "Agreement," two points are to be considered, *viz.* :—

1st. Whether it comes within this description.

(*a*) See page 24, *post.*

(*b*) The words "under hand only," were introduced for the first time in the 44 Geo. III. c. 98; and the words, "or minute or memorandum of an agreement," in the 48 Geo. III. c. 149. See the TABLE.

2ndly. Whether the matter thereof be of the value of 20*l.* or upwards.

If both these points be in the affirmative, a further question may arise, *viz.*, whether the instrument falls within any of the exemptions. Upon all these points numerous cases have arisen.

Agreements obligatory.

The first case which appears to be reported, where an objection was taken to the admissibility of a writing in evidence for want of an agreement stamp, is *Hearne* v. *James* (c), in the Court of Chancery, which was that of a bill for a specific performance of an agreement. The Master of the Rolls observed, that wherever the terms of a contract were reduced into writing the instrument must be stamped, though parol evidence might have been given of them. His Honour, however, alluded to a case on a trial at *nisi prius* of an action for rent, where an agreement for a lease, not stamped, was admitted, because it was not produced as obligatory, but merely as evidence of the quantum of rent at which the land was held, whilst under lease. This, no doubt, was before the 23 Geo. III. c. 58.

Reference in a parol agreement to a prior writing not liable.

In a case where a previously existing written (or printed) proposition was referred to in a parol contract, as containing the terms to be adopted by the parties, such proposition was received in evidence by Lord *Ellenborough* without a stamp (*d*). The plaintiff acted as a kind of medical broker; and the paper in question was a prospectus, in which he signified the terms upon which he undertook to introduce applicants to partnerships or situations.

Prospectus, not liable.

Prospectus, liable.

But in an action by a schoolmaster for board and tuition, where it was necessary to resort to his prospectus, a stamped copy was offered, but it was objected that the identical one delivered to the defendant should be produced; this copy however was not stamped, and it was therefore rejected (*e*).

The distinction between these two cases is scarcely sufficiently marked to afford the means of satisfactorily reconciling the decisions.

Proposal adopted in subsequent verbal agreement, not liable.

In *Drant* v. *Brown* (*f*), the plaintiff proved a verbal agreement with the defendant's testator, on terms previously offered by the plaintiff. On cross-examination, it appeared that these terms were reduced into writing, and notice having been given, the paper, which was signed by the plaintiff, was produced, and was objected to, for want of a stamp; but the learned Judge admitted it, and

(*c*) 2 Bro. C. C. 309.
(*d*) *Edgar* v. *Black*, 1 Stark. 464.
(*e*) *Williams* v. *Stoughton*, 2 Stark 292.
(*f*) 3 B. & C. 665.

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the Court afterwards held that the writing was properly received; the plaintiff had legally made out his case by proving the parol agreement; and when the paper was produced, it did not show any contract, it was a mere proposal, and was quite the reverse of a parol agreement afterwards reduced into writing.

Former instrument referred to as the basis of a subsequent contract, liable.

But an instrument between other parties, referred to as the basis of a subsequent contract, cannot be read unless it be properly stamped; as in *Turner* v. *Power* (*g*), where a verbal agreement to occupy certain premises on the same terms as the former tenant, was proved; the lease, on being produced, was found to be improperly stamped, and it was rejected; Lord *Tenterden* observing, that the Stamp Acts might be easily evaded if such evidence could be received. In the argument before the Court the counsel for the plaintiff referred to *Drant* v. *Brown*, but the Court said, that was the case of a mere proposal, and not an agreement.

See cases and observations upon this subject, in treating of the question of the admission of unstamped instruments for collateral purposes, under the head "INSTRUMENTS."

Terms of deposit stated by the depositor, being the only evidence, liable.

Bowen v. *Fox* (*h*), was an action for a wrongful disposal of a certificate of ship's registry deposited with the defendants; and at the trial the following memorandum, signed by the plaintiff, was tendered, *viz.*:—

"GENTLEMEN,

"You will be pleased to receive the register of the brig G. which I inclose, and which I hope will be satisfactory; the cost and expense on account of my being arrested please to state, and charge to my account." The document was rejected for want of a stamp, and the plaintiff was nonsuited; a new trial was refused, the Court observing, that this letter was the only evidence of the terms upon which the deposit was made, which was the distinction between this case and those of *Edgar* v. *Black*, and *Drant* v. *Brown*.

A mere unaccepted proposal, not liable.

A mere proposal was held by *Abbott*, C. J., in *Penniford* v. *Hamilton* (*i*) not to be within the Act. That was an action for work and labour; the defendant offered in evidence, for the purpose of reducing the plaintiff's demand, a proposal in writing made to him by the plaintiffs, not finally acceded to, containing an estimate of the amount of the work, which was received without a stamp. See also *Shackel* v. *Rosier* (*k*).

The like.

In replevin, in order to rebut the statement of the defendant's

(*g*) 1 Moo. & M. 131; 7 B. & C. 625.
(*h*) 2 M. & R 167.
(*i*) 2 Stark. 475.
(*k*) 2 Bing. N. C. 640.

steward, that the draft of a lease produced, contained the final agreement between the parties, an unstamped paper, of a subsequent date in the handwriting of the steward, containing a proposal to the plaintiff to pay a different rent, was received; and the Court, afterwards, held that the paper did not amount to an agreement, or a minute or memorandum of an agreement, but was a mere unaccepted proposal, and, therefore, admissible without a stamp (*l*).

Request for shares, not liable.

In *Vollans* v. *Fletcher* (*m*), and *Willey* v. *Parratt* (*n*), a letter of request for shares in a projected railway, and the letter, in answer, were admitted without a stamp, on the ground that the terms on which the allotment was made varied from the application, and not being acceded to by the applicant, there was no contract.

Direction to a third party, not liable.

An authority or direction to a third person, arising out of a transaction between the principal parties, is not an agreement. In *Walker* v. *Rostron* (*o*), the plaintiff having sold goods to one *Bull*, and received his acceptances for the price, and being desirous of having some further security, a letter was, by agreement between them and the defendant, a partner of *Bull* and the consignee of the goods, written by *Bull*, authorizing and directing the defendant, out of the proceeds of the consignments, to pay such acceptances as they became due, or afterwards, if, previously to the receipt of such proceeds, they should not be honoured by him. The Court held this letter to be a mere order, and not a memorandum in which both parties had reduced to writing the binding terms of their agreement.

A memorandum assented to but not signed, not liable.

In *Doe dem. Bingham* v. *Cartwright* (*p*), the bailiff of the lessor of the plaintiff proved that he agreed to let the land in question to the defendant, who was to sign an agreement and bring a surety; that a memorandum was drawn up and read over to the defendant, who assented to, but did not sign it; nor did he bring a surety; it was held to be a mere proposal, and no agreement,

Approval of the draft of an agreement, not liable.

A memorandum, "We approve of the within draft," written on the back of the draft of an agreement, and signed by the parties, was held not to be an agreement. Lord *Tenterden* considered it

(*l*) *Hawkins* v. *Warre*, 3 B. & C. 690.

(*m*) 11 Jurist, 416; 16 L. J. R. (N S) Exch. 173; 1 W H. & G 20

(*n*) 18 L. J. R (N. S.) Exch 82.

(*o*) 9 M. & W. 411.

(*p*) 3 B & Ald. 326.

merely amounted to evidence of an intention to agree to something (*q*).

A proposal in writing, accepted by parol, liable.

But in the case of a proposal, in order to constitute the writing an agreement liable to stamp duty, it is not necessary that the proposal should be accepted in writing, a parol acceptance is sufficient. This was so held by the Court of Exchequer in Ireland, in a case of *Hope* v. *Bateman*, after much deliberation, as appears by the report of a subsequent case of *Johnson* v. *M'Cullagh* (*r*), in which the decision was followed by Mr. Justice *Perrin*.

The case of *Moore* v. *M'Kay* (*s*) cannot be referred to as an authority; the proposition of the Lord Chancellor, (Sir *Anthony Hart*,) that a letter written by one party containing a proposal, and returned by the other with his acceptance indorsed, was not open to objection for want of a stamp, is at variance with every decision. The circumstance of the "treaty and agreement" in that case being afterwards carried into effect by a more solemn instrument, (a lease,) could not alter the character of the original contract. If a bill had been filed for a specific performance, his Lordship must have admitted its liability.

Memoranda not signed, liable.

Teal v. *Auty* (*t*) was an action for the price of some poles purchased growing, and admitted to be an interest in land within the Statute of Frauds. The declaration contained also a count upon an account stated. The poles had been cut and carried away, the contract therefore was executed; but the plaintiff being unable to prove what was due to him on the account stated, and certain unsigned memoranda, made at the time of the bargain, (one of them an item in a book of account,) not being receivable, by reason of not containing the names of the parties to be charged, and, having no stamp, he was nonsuited; and the Court, on motion, held the nonsuit to be right. No argument appears to have been raised upon the question, whether the memoranda were such as fell within the description of writings charged with stamp duty, the case is, therefore, no authority upon the point.

The words "under hand only" to be read as, "not under seal."

In order, however, to satisfy the description of instrument chargeable with duty, it is certainly not essential that the writing should be signed by any party, or the agent of any party; the words "under hand only" are to be understood as meaning merely "not under seal."

(*q*) *Doe dem. Lambourn* v. *Pedgrigh*, 4 C. & P. 312.

(*r*) 2 Cra. & Dix, Cir. Rep. 236.

(*s*) 2 Molloy, 134.

(*t*) 2 B. & B. 99; 4 Moore, 542.

The case of *Chadwicke* v. *Clarke* (*u*) was an action for use and occupation by one director of a public company against another; and in order to show that the plaintiff had contracted in his individual character with the company, the draft of an agreement, settled by the solicitors on both sides, was offered, but was rejected as inadmissible to prove the contract, without a stamp, and the plaintiff was nonsuited. On motion, the Court held that a stamp was requisite. The writing was more than a mere proposal; it was not, as it was also contended, evidence from which the Jury were to infer a previous parol contract; it was considered as embodying within itself the terms upon which the parties contracted; it was, clearly, treated by the parties as the instrument of demise, and was sought to be put in as evidence of the contract, and, consequently, it required a stamp. The circumstance of its not being signed made no difference; the words in the Stamp Act, "under hand only," were not to be so construed as to include signed instruments, merely; these words were inserted for the purpose of distinguishing agreements, not under seal, from those which were of that solemn nature.

A contract not signed, liable.

In the course of the argument Mr. Justice *Cresswell*, in alluding to Lord *Tenterden's* opinion in *Doe* v. *Pedgrph*, observed, that he should have thought the words, "we approve of the written draft," imported an agreement.

In *Beeching* v. *Westbrook* (*x*), the Court was of opinion that an instrument, to come within the Act, must have been made with the intention of containing within itself the terms of an agreement between the parties, and not be merely a writing, the contents of which tend to show the existence of an antecedent contract; that letters only require a stamp which are written whilst the agreement is in the course of being made, and not those written afterwards. In that case the father of an illegitimate child, after paying a weekly sum for its maintenance for some years, had discontinued to do so, and letters, containing promises to remit money, and making excuses for not doing so, were held not to require a stamp.

The writing must be intended to be an agreement.

This opinion, although it narrows the meaning of the words "evidence of a contract," is, doubtless, a rational interpretation of them, and something upon the principle of which many of the earlier cases have been decided. Care, however, should be taken

(*u*) 9 Jurist, 539; 14 L. J. R. (N. S.) C. P. 233.

(*x*) 8 M. & W. 411; 1 Dowl. N. P. 18.

to distinguish between cases within the rule here laid down, and those of parol agreements afterwards reduced into writing.

Writing, evidence of a bygone transaction.

In reference to this construction of the statute, a recent case (*z*) may be alluded to; the report of which it would be satisfactory to find was, in setting forth the judgment, erroneous; but, having regard to the usual accuracy with which the cases are presented, this is not to be expected; although one error (probably typographical) is to be detected in the report of the case in question. The action was brought for the disturbance of a ferry, and on the trial before C. J. *Tindal* an unstamped document to the purport following, not under seal, was tendered in evidence and received, *viz.*: "April 14th, 1804. To all to whom this obligation or agreement may concern:—Be it known unto you that we *George Mayfield* and *Thomas North* have this 14th day of April, 1804, entered into agreement, that the said *T. N.* shall rent of the said *G. M.* the ferry well known, &c., for the sum of 6*l.* 6*s. per annum*, to be paid half-yearly to the said *G. M.*, for which the said *T. N.* is by this agreement entitled to the sole use and advantage, or whatever profit may occur from the said ferry from the time he holds the same. Be it also known that the said *T. N.* has this day bought of the said *G. M.* the great ferry boat for 20*l.*, of which 5*l.* shall be paid on the 6th of April, 1805, and 5*l.* more on the 6th April, 1806, the third 5*l.* on the 6th April, 1807, and the last 5*l.* on the 6th April, 1808. But in consequence of any alteration taking place in such sort as to render the ferry void and useless before the 6th April, 1808, the said *T. N.* shall pay to the said *G. M.* the whole of what remains unpaid at such time as the said ferry may become useless; and in order to confirm and ratify this agreement we do this 14 day of April, 1844, [1804,] set our hands."

On a motion for a new trial the question was, whether the document, not being stamped, was admissible; and the Court held that it was. It was not a lease, being an attempt to grant an incorporeal hereditament by an instrument not under seal: Lord *Denman* observed, that "we also think it is not liable as an agreement, because as to the boat, which is said to be sold, it is, in fact, only a memorandum of the sale of that boat, as a bygone transaction. It is moreover an agreement relating to the sale of goods, exempt from all stamp duties whatever. It was argued that it was not a sale of goods because the boat might be ancillary to the ferry,

(*z*) *Mayfield* v. *Robinson*, 14 L. J. R. (N. S.) Q. B. 265; 7 A. & E. (N. S.) 486.

and therefore a part of that grant, so that the value might be raised to the eighteen guineas, three years' rent, and to 20*l.* supposing the two could be added together. We think that they cannot, that the boat was not sold as ancillary to the grant of the ferry."

There can be no question that, so far as the boat was concerned, the contract was within the exemption relating to the sale of goods; but it is, with great respect, confidently submitted, that it was not free from the charge by reason of its relation to a bygone transaction; if it was, then can no writing be liable which states that the parties *have* contracted; for the instrument in question not only expresses that the parties have, that same day, entered into agreement, but it goes on to provide for the completion of the bargain at future periods; it was, obviously, intended to be both "evidence of a contract, and obligatory upon the parties;" and the effect would be precisely the same, even admitting that the document was made at a period subsequent to the transaction, as the object, in such a case, must have been to bind the parties by written evidence of the contract. In every instance (except the case of letters) a verbal agreement, of necessity, precedes a written contract, and whether the latter be expressed in the past or present tense can possibly make no difference (*a*).

Evidence of a fact, not of an agreement.

Notice of dissolution.

To prove that a partnership formerly subsisted between the defendants, the notice of the dissolution of such partnership, as published, was admitted without a stamp; Lord *Ellenborough* observing, that it was only used as evidence of an acknowledgment (*b*).

In this case his Lordship also stated that a stamp was necessary only when the instrument was used directly as an agreement, but not where it was introduced merely incidentally, otherwise it would be necessary to stamp all papers. This doctrine must be received, however, with some qualification. See "INSTRUMENTS."

Again, the original notice signed by the parties, that the partnership between them had been, on and from the day of the date,

(*a*) The above remarks were written in reference to the report of the case as it appeared in the Law Journal Reports, and before seeing that in the Queen's Bench Reports, where Lord *Denman* is stated to have said, in speaking of joining the subject-matter of contract as to the boat with that relating to the ferry, that the agreement was "a distinct and separate memorandum of a bygone purchase of *goods*," which mode of expression conveys a very different idea of the view entertained by his Lordship as to the reason for the exemption; attaching importance, in considering the question, to the circumstance of the contract relating to a sale of goods, and not to that of its referring to a bygone transaction.

(*b*) *Wheeldon* v. *Matthews*, 2 Chitty, 399.

dissolved, was determined by Lord *Ellenborough* not to be an agreement for the dissolution, but a mere recital that it had already taken place, and therefore not liable to stamp duty (*c*).

Notice of dissolution, proof of agreement, liable.

But in the case of *May* v. *Smith* (*d*) the original notice, signed by the parties and left at the Gazette Office to be advertised, that they had agreed to dissolve partnership, was held to be liable, and not admissible as evidence of such agreement without a stamp

Proof both of fact and agreement.

This distinction, between the evidence of a fact and the evidence of an agreement, is particularly brought to notice in the case of *Forsyth* v. *Jervis* (*e*). The plaintiffs, who were gun-makers, had agreed to make a gun for the defendant at a certain price, and to take another gun in part payment. The defendant delivered his gun, but afterwards borrowed it to use; it was held that an unstamped letter from the defendant might be read in evidence to prove the borrowing, but not the contract.

Acknowledgment of bills received to get discounted, not liable.

In a case where bills were given to a party to get discounted, a memorandum, signed by him, stating that "he had in his hands three bills amounting to 120*l.* 10*s.* 6*d.*, which he had to get discounted or return on demand," was held not to require a stamp. Lord *Tenterden* observed, that if the party had bound himself absolutely to get the bills discounted, it might then have required a stamp, because it would be evidence of a contract to do something which he would not otherwise be bound to do, but that by this instrument he made no other contract than that which the law implied in every case of mere deposit of bills (*f*). In a subsequent case, *Doe* v. *Frankis*, *Coleridge*, J., expressed himself not satisfied with this decision, but Lord *Denman* thought it was right.

The like.

Again, an attorney, to whom a bill was delivered by his client, signed the following memorandum: "I have this day received a bill of exchange for 300*l.*, drawn by one *Patterson* upon *Thomas Harrison*, bearing my indorsement, and the indorsement of Sir *Paul Baysho*t, which I hold, as your attorney, to recover the value of from the respective parties, or to make such other arrangement for your benefit as may appear to me, in my professional capacity, reasonable and proper." The Court held this to be a mere acknowledgment of the duty which the party took upon himself to perform, and not evidence of a contract, and, therefore, that it did not require a stamp (*g*).

(*c*) *Jenkins* v. *Blizard*, 1 Stark. 418.
(*d*) 1 Esp. 283.
(*e*) 1 Stark 437.
(*f*) *Mullett* v. *Hutchinson*, 3 C. & P. 92; 7 B. & C. 639; 1 M. & R. 522.
(*g*) *Langdon* v. *Wilson*, 7 B. & C. 640, note; 2 M & R. 10.

Acknowledgment of property in hand.

And in an action for the non-delivery of certain wine, a document signed by the defendant, certifying that he had in his cellar belonging to the plaintiff's intestate, and had received from her, certain quantities of wine, which were paid for, and that on the last settlement of the empty bottle account a certain sum remained due to her, was considered by the Court as evidence of a mere fact, from which a contract was sought to be inferred (*h*).

Acknowledgment of a pre-existing contract.

On the 30th March, *M.*, the occupier of a farm, agreed to sell to *P.* the crops at a price to be fixed by certain valuers, the same to be secured to be paid on the 1st September. On the 1st April a memorandum was added that the valuers should be at liberty to revise their valuation on the 1st August; and on the same day the first valuation was made, and a promissory note given by *P.* for the amount, and left in the hands of *W.* These two documents were stamped as agreements. On the 20th August the note was handed over to *M.*, on her signing a memorandum that the same was to be subject to the revised valuation, and would be more or less accordingly. It was held, after much doubt on the part of Mr. Justice *Wightman*, that this last memorandum, which was an acknowledgment of a contract, was not, itself, an agreement, or a minute or memorandum of an agreement, requiring a stamp (*i*).

Memorandum identifying a particular of sale.

In *Mott* v. *Delane* (*k*), which was an action of trespass wherein the right to the *locus in quo* was involved, the plaintiff put in a paper, being particulars of sale of adjoining property, on which was inscribed in the defendant's handwriting, "This is the particular under which I purchased the Bath rooms in confirmation of my lease." This was not stamped, and was objected to, but was admitted, and the Court afterwards discharged a rule *nisi* for a new trial.

Memorandum by one party of something done.

The following document was held, by reference to *Beeching* v. *Westbrook*, not to be an agreement, nor evidence of an agreement, but, merely, a memorandum, by one party, that something had been done, *viz.*: "On demand, I promise to pay *W. T. H.*, or order, 500*l.*, with interest at four per cent.; and I have lodged with *W. T. H.* the counterpart leases signed by *G. D.*, &c., for ground let by me to them, respectively, as a collateral security for the said 500*l.* and interest" (*l*).

The point, as to the legal value of this memorandum, was not

(*h*) *Blackwell* v. *M'Naughten*, 1 A & E. (N. S.) 127.

(*i*) *Marshall* v. *Powell*, 11 Jurist, 61; 16 L. J. R. (N. S.) Q. B. 5.

(*k*) 2 Jurist, 592.

(*l*) *Fancourt* v. *Thorn*, 10 Jurist, 639.

properly before the Court. The action was by an indorsee of the note, (which was stamped, as a note,) and had no reference, therefore, whatever, to the memorandum. It may be asked, For what purpose was this memorandum, of something done, made? If in order to show the object for which the deeds were deposited, the equitable mortgage, which it would, certainly, appear to be, there would scarcely seem room to doubt its liability as an agreement within the principle referred to; but if it was merely to connect the two securities, and, for the safety of the borrower, to point out that the note was given for the same sum for which the deposit was made, then, perhaps, it might be said to be, merely, a memorandum, by one party, that something had been done. Had *W. T. H.* filed a bill, to compel the defendant to execute a mortgage, would not this memorandum have been admitted as evidence of the agreement to do so?

Broker's note to employer, not liable.

A broker's note to his employer that he had bought for him certain gas shares at 2*l.* premium, (8*l.* already paid,) was received in evidence without a stamp. In this case, it having turned out that only 5*l.* had been paid on the shares, the principal brought his action against the broker for the difference; and the Court held that notes of this kind were not evidence of contracts, and were admissible as proof that the broker had performed the transaction (*m*).

Purchaser's note of shares bought, liable.

But the following note, signed by the defendant, to whom the plaintiff had agreed to sell certain scrip certificates, with the view to its being shown to the plaintiff, was held to be the contract between the parties, reduced into writing, within the meaning of the Stamp Act, as defined in *Beeching* v. *Westbrook*, and liable to duty accordingly; *viz.*: "Bought of *Nathan Knight* fifty shares in the Huddersfield, Halifax and Bradford Railway Company, at 10*l.* per share" (*n*).

Consent to an act without prejudice, not liable.

In an action by an indorsee against the drawer of a bill, the following was admitted by Lord *Tenterden* without a stamp:—

"I, *James Johnson*, hereby consent to Mr. *R. Hill* using any means he can to enforce payment from Col. *O.* for my bills drawn by me and accepted by Col. *O.*, without prejudice to his right to recover against the drawer" (*o*).

Admission of occupation by sufferance, not liable.

In an action of trespass for breaking and entering the plaintiff's house and expelling him, the following paper was given in evidence

(*m*) *Tomkins* v. *Savory*, 9 B. & C. 704.

(*n*) *Knight* v. *Barber*, 10 Jur. 929; 16 L. J. R (N. S.) Exch. 18; 16 M. & W. 66.

(*o*) *Hill* v. *Johnson*, 3 C. & P 456.

without a stamp:—"I, *D. Barry*, hereby certify that I remain in the house belonging to Mr. *Goodman* upon sufferance only, and agree to give immediate possession to Mr. *G.* at any time he may require." The Court held it to be a mere admission that the house was Mr. *Goodman's*, and that the plaintiff had no interest in it; that as to the agreement to give it up, that followed as a matter of course (*p*).

Admission in letter to a third person, not liable.

A letter written by the defendant, the proprietor of a theatre, to a third person, saying that the plaintiff must be satisfied with his salary until the defendant knew what turn the season took, was held to be nothing between the parties, but simply an admission made by the defendant to a third person that the plaintiff was in his service (*q*). This decision, although it might be referred to another ground, would, if the letter had been written to the plaintiff himself, be, perhaps, strictly within the principle exemplified by the foregoing cases, and particularly that propounded in *Beeching* v. *Westbrook*.

Indorsement on a deed made some years after the execution, agreeing that stock should not be dispose of without notice.

In a case where a sum of money was advanced as a marriage portion, and certain parties had, by deed, agreed to transfer 2000*l.* Consols, in order to secure such sum, and the stock was transferred, a memorandum was, some years after the date of the deed, indorsed upon it, whereby it was agreed that the stock should not be disposed of without notice to the other parties; and it was held by Lord *Kenyon*, that this indorsement did not require a stamp. His Lordship instanced the case of mortgage deeds, on indorsements upon which, varying the rate of interest, it had not been held necessary to have new stamps (*r*).

Neither this decision, nor the practice to which his Lordship refers, can scarcely be considered satisfactory; it does not clearly appear why an agreement, in any such case, is exempt from duty; and the doubt, thus suggested, receives force from the decisions in the following cases:—

Consent to enlarge time for making award, liable.

In an arbitration, the parties met and proceeded on the reference after the period limited in the bond for that purpose, when they signed a memorandum, dated the day of the meeting, that they had so done by consent. This was held to be an agreement to substitute the latter for the prior date, and to require a stamp (*s*).

So in *Bacon* v. *Simpson* (*t*), the substitution, by indorsement,

(*p*) *Barry* v. *Goodman*, 2 M. & W. 768.
(*q*) *Frazer* v. *Bunn*, 8 C. & P. 704.
(*r*) *Herne* v. *Hale*, 3 Esp. 237.
(*s*) *Stevens* v. *Lowe*, 2 Moore & Scott, 44.
(*t*) 3 M. & W. 78.

of another day for completing the contract, was deemed to be a fresh agreement. There seems scarcely a shade in the difference between substituting a date, and a rate of interest; in either case it is, to a certain extent, a new agreement; and, indeed, the varying of an existing contract by substituting a new rate of interest, seems rather to partake of the character of a fresh contract than the other.

In *Bacon* v. *Simpson* a point was raised as to the value of the matter of the agreement, which was not noticed in *Stephens* v. *Lowe*; it was not, however, decided. See cases, p. 37, *post*.

Memorandum of mode of payment for goods, liable.

An action for goods sold and delivered was commenced before the expiration of the term of credit, and for the purpose of proving such term, the bill of parcels was produced, with the following words written at the bottom: "Settled by two bills, one at three months, and another at nine months;" this was held to be an agreement as to the mode of payment, and to require a stamp (*s*).

No allusion appears to have been made to the circumstance of the memorandum being an agreement relating to the sale of goods, and, therefore, falling within the exemption under that head. It was, unquestionably, in terms, a *receipt* within the Stamp Act, and liable to stamp duty as such.

Agreement to take debt by instalments, liable

A writing, signed by the plaintiff, to the following effect, was offered in evidence, and held to be inadmissible for want of a stamp, *viz.*: "Memorandum, I, *John Remon*, consent to take 10*s*. per month from *W H Hayward*, in discharge of 32*l*. the said *W. H. Hayward* intends giving him, and upon the said sum being paid he engages giving a receipt in full of all demands" (*t*).

A proposal by one party on one point pending a negotiation, not liable.

Pending a negotiation for letting apartments for three years, but after the tenant had taken possession, a conversation took place between the parties, when one of them wrote, and the other signed, the following memorandum:—

"I shall be happy to allow Mr. *B*. to leave the apartments without any notice, if he finds any thing which may at all lead him to suspect that there is any embarrassment in his landlord."

This was held not to require a stamp; the Court considered it a mere proposal as to one particular point then under discussion, made during a negotiation for a tenancy, the terms of which might be proved by parol evidence (*u*).

Resolution of a public com-

A resolution was made and signed by the provisional committee

(*s*) *Smith* v. *Kelly*, 4 Esp. 249.
(*t*) *Remon* v. *Hayward*, 2 A. & E. 666.
(*u*) *Bethel* v. *Blencowe*, 3 M. & G. 119; 3 Scott, N. R. 568.

a projected association, by which, in acknowledgment of the services of the plaintiff, they undertook and agreed to appoint him to the office of secretary, to be held by him so long as they should be in the direction; and not to relinquish the management without first securing a confirmation of the appointment. A subsequent resolution was also made, by which the plaintiff was appointed secretary for three years, at a salary of 5*l.* per week. These resolutions were held not to be agreements liable to stamp duty.

pany agreeing to appoint a secretary, not liable.

Tindal, C. J., observed, that the words of the Act were not confined to cases where there was an agreement, but extended to all cases in which recourse was had to any writing as evidence of a contract; but he was of opinion that neither of the resolutions was such a document; it did not appear that the plaintiff was present, or was consulted about it; it might be evidence to show the terms upon which he was afterwards employed (*x*).

At a meeting of a committee for making a turnpike road, a proposal was given in by the plaintiff, which was accepted, and the following minute was made, *viz.*:—

The like; accepting a proposal.

"Mr. *G. O. Lucas* attended the meeting, and produced an estimate for making the survey, &c., which offer the Committee accepted."

At a subsequent meeting a deviation from the original line was determined on, and the following minute was made, *viz.*:—

"It was agreed that there should be a deviation, &c., and that Mr. *Lucas* be allowed an additional sum of 20*l.* for the extra trouble he will have;" which minute was read over to the plaintiff, who assented to it: neither of the minutes was stamped. The Judge admitted the first, as not liable to stamp duty, but rejected the second, on the ground, that having been assented to by the plaintiff, it was evidence of a contract. The plaintiff recovered a verdict, and on a motion for leave to enter a nonsuit, the defendant's counsel admitted, that after *Vaughan* v. *Brine*, he could not sustain his objection to the first agreement (*y*).

An auctioneer is an agent for both the buyer and seller, and his writing is a sufficient note or memorandum within the Statute of Frauds (*z*). On a letting of lands by auction, the auctioneer handed to the highest bidder for a lot, a piece of paper, signed by himself, stating the premises, the term, the amount of rent, and the name of the bidder. It was contended that this was not

Auctioneer's signed note, liable.

(*x*) *Vaughton* v. *Brine*, 1 M. & G. 359; 1 Scott, N. R. 258.

(*y*) *Lucas* v. *Beach*, 1 M. & G. 417; 1 Scott, N. R. 350.

(*z*) See *Simon* v. *Metevier* or *Motivos*, 1 Bl. 599; 3 Burr. 1921.

a contract, nor evidence of one, the name of one of the contracting parties being wanting, but the Court held it to be evidence of a material part of the contract, and that it ought to be stamped (*a*).

Dampier, J., observed, that though this might not be such a memorandum as would satisfy the Statute of Frauds, it was one that required a stamp.

Auctioneer's note not signed, not liable.

In a similar case, where the paper was not signed by the auctioneer, the Court held that it was collateral to the taking, and no more than if the auctioneer had told the party on what terms he was to hold, and was not like an original minute, and was, therefore, not subject to the duty (*b*).

Minute made by agent of both parties, liable; if agent for one party, not liable.

Although a minute of a contract, made by a person acting as agent for both parties, as, for instance, by an auctioneer on a sale by auction, is an agreement, and requires, therefore, to be stamped; it is otherwise, if he be the agent only of one party, making a minute for his own employer (*c*). In the latter case it was also admitted, that if an interest in land be of the value of 20*l*., an agreement, relating to it, requires a stamp.

As to resorting to other cause of action, where agreement not stamped.

In an action to recover a deposit on the purchase of a lease, where the plaintiff declared on a special agreement, and, also, for money had and received, but the agreement, being neither signed nor stamped, was not admissible; *Abbott*, J., was of opinion that the plaintiff might still be entitled to recover on the money counts (*d*).

But in *Hughes* v. *Budd* (*e*), where an agreement, (signed by the plaintiff only,) was not admitted, being unstamped, the plaintiff was not allowed to recover the value of the work and labour to which it referred, although the defendants had had the benefit of it.

Cognovit not liable, unless special terms added.

A mere cognovit, or acknowledgment of a debt, does not require a stamp, but if any special terms, beyond a simple confession or admission, be added, it then becomes an agreement, liable to stamp duty. In *Ames* v. *Hill* (*f*), the Court, (*Eldon*, C. J.,) having taken time to consider the point, so determined in the case of a cognovit, and that a stipulation, for payment of the debt by instalments, constituted such special terms. The same was, also, held in *Reardon* v. *Swaby* (*g*). In *Bray* v. *Manson* (*h*), the de-

Consent to judge's order.

(*a*) *Ramsbottom* v. *Mortley*, 2 M & S. 445.

(*b*) *Ramsbottom* v. *Tunbridge*, 2 M & S. 434.

(*c*) *Josephs* v. *Pebrer*, 1 C. & P. 341; *Emmerson* v. *Heelis*, 2 Taunt. 38.

(*d*) *Adams* v. *Fairbairn*, 2 Stark. 277.

(*e*) 8 Dowl. 478.

(*f*) 2 B. & P. 150.

(*g*) 4 East, 188.

(*h*) 8 M. & W. 668.

fendant, after notice of trial given, signed a consent to a Judge's order for a stay of proceedings, on payment of the debt and costs by a certain day, with the usual condition, that in default, the plaintiff should be at liberty to sign final judgment, and issue execution; this, it was contended, amounted to a cognovit, and required a stamp, as an agreement: the Court said, "It is true a cognovit requires a stamp when it contains any special terms, beyond a simple confession, which is not the case here." The inference from this decision seems to be, first, that the peculiar form in which the consent to signing final judgment was given did not affect the question, and, secondly, that a condition that judgment should be signed and execution issued, only in default of payment by a given day, would not constitute special terms in a cognovit. This latter point was so held by *Abbott*, L C. J., in *Jay* v. *Warren* (*i*).

Cognovit with stay of judgment, not liable.

A stipulation, that advantage shall not be taken of its being given before declaration, does not render a cognovit liable (*k*).

In *Morley* v. *Hall* (*l*), where a cognovit was given, a memorandum was made, on a separate piece of paper, to the following effect, *viz.*: "The cognovit given by Mr. *Hall* this day, is not to be put in execution for a fortnight, Mr. *Hall* having paid 5*l.* on account." Mr Justice *Taunton* held, that the objection to the want of a stamp on the cognovit could not prevail; the law, upon the subject of stamps, was altogether *positivi juris*, it involved nothing of principle or of reason, but depended, altogether, on the language of the legislature; there was no stamp applicable to a cognovit, but the Courts had said, that if a cognovit contained matter of agreement or stipulation, it should be stamped as an agreement; he did not think the memorandum could be connected with the cognovit, so as to make it, (the cognovit,) bad for want of a stamp

Cognovit with stipulation on separate paper.

In an action for use and occupation, the defendant disputed his liability to pay rent, on the ground that he, himself, was not the tenant; to rebut which, the following unstamped paper, signed by him, was put in, *viz.*:—"In consideration of your withdrawing, at my request, the distress on the premises which I hold of you, I authorize you to re-enter and distrain for the rent, 38*l.* 10*s.*, or any less sum then due," &c. It was held to be a licence or authority, only, and not a contract; and, moreover, it was not shown to be of

Licence to re-enter, not a contract.

(*i*) 1 C. & P. 532.

(*k*) *Green* v. *Grey*, 1 Dowl. 350.

(*l*) 2 Dowl 494

the value of 20*l.*; it was a mere indemnity against future damages to which the landlord might be liable in a given event, which might be trifling (*m*).

Mere attornment, not liable.

A mere attornment is not liable to stamp duty, as an agreement. In *Doe dem. Linsey* v. *Edwards* (*n*) the following document was held to be a mere attornment, not requiring a stamp:—

"We, whose names are hereunto set, being tenants and undertenants of an estate, &c. do hereby severally attorn, and become tenants and undertenants to *George Linsey*, &c. at and under the several yearly rents now paid by us, and we have this day paid 1*s.* a piece in part of our rents."

Again, the lessors of the plaintiff in an ejectment having obtained a verdict, it was arranged that the defendant should take a lease, and he signed a paper, entitled in the action, which, after reciting the judgment recovered, proceeded thus:—"Now know all men, that in consideration of the premises, I do hereby attorn tenant to the said —— *Taylor* for the messuages, &c. now in my possession, and have this day paid 1*s.* upon that attornment, on account and in part payment of the rent due, and to become due, from me," &c. It was held, that this was a mere attornment, and not, therefore, liable to stamp duty (*o*).

Attornment with special terms, liable.

But where the tenants attorned to persons who, it was not shown, had any legal estate in the property, to hold for such time, and on such conditions as should be subsequently agreed on, the instrument of attornment was determined to be an agreement, not admissible in evidence without a stamp (*p*). This case was cited in that of *Doe* v. *Edwards*, and the distinction taken by the Court.

The same was again decided in *Frankis* v. *Frankis* (*q*), in which it was held, that although a mere attornment required no stamp, yet that if it proceeded to state the amount of rent, and the mode of payment, it became an agreement, chargeable with duty.

An authority to pay money, not an agreement.

A letter from one solicitor to another, acting on behalf of their respective clients, authorizing the client of the latter solicitor, in order to prevent a forfeiture of shares in a mining company, to pay certain calls thereon, such letter being written in answer to one inquiring whether this should be done or not, was held, in an action

(*m*) *Hill* v. *Ransom*, 12 L. J. R. (N. S.) C. P. 275; or *Hill* v. *Ramm*, 6 Scott, N. R. 571.

(*n*) 5 A. & E. 95; 2 H. & W. 139.

(*o*) *Doe dem Wright* v. *Smith*, 3 Nev. & Per. 335; 8 A. & E. 255; 2 Jurist, 854.

(*p*) *Cornish* v. *Searell*, 8 B. & C. 471.

(*q*) 3 P. & D. 565

for the money paid, not to be an agreement, but a mere direction out of which the law implied an agreement (*r*).

A receipt for rent, due after a notice to quit given by the landlord, which contained a proviso that the acceptance of the rent should not be a waiver of the notice, was objected to, at the trial of an ejectment, not having an agreement stamp, but the objection was overruled by Lord *Denman;* on a motion for a new trial the objection was not renewed (*s*).

A receipt for rent, with a proviso against waiver of notice to quit, not an agreement.

The articles of a foreign ship, originally made in Sweden, regulating the wages of the sailors, and containing other matters relating to the ship, even where the sailors were hired in London, and the articles lodged with the Consul there, were received in evidence on the part of the defendant as to the hiring, without a stamp; the Court holding the paper not an agreement between the parties, but a regulation of the Court of Sweden, and evidenced by the Consul (*t*).

Articles of foreign ship.

As to the Value of the Subject-matter.—The second point to be considered, in ascertaining whether or not the writing is liable to duty, is the value of the subject-matter; for, unless such value be 20*l.*, or upwards, the instrument is not within the Act. Under the 23 Geo. III. c. 58, the non-liability, in such cases, was by way of special exemption, but, by the present Stamp Act, instruments are *charged,* only where the matter is of the value stated; as was the case, also, by the 44 Geo. III. c. 98, and 48 Geo. III. c. 149; and the difference between these modes of providing for the exception, makes this difference in practice; that, at present, it is incumbent on the party objecting to the want of a stamp, to show that the instrument is within the charge; but formerly, where that was, *primâ facie,* shown, it was for the party relying on the exemption, to bring the instrument within it. This distinction it is still necessary to bear in mind, in reference to present exemptions.

Value.

In cases where there is no criterion of value, there can be no charge of duty; thus, a contract of marriage has been held not to be liable (*u*). In that case Mr. Justice *Bayley* observed, that the legislature, in charging the duty on agreements, supposed that the value of the contract was measurable, which was not the case in a marriage contract.

Contract of marriage, not liable.

(*r*) *Parker* v. *Dubois*, 7 C. & P. 406; 1 M. & W. 30; Tyr. & G. 243; 1 Gale, 366.

(*s*) *Doe dem. Wheble and another* v. *Fuller*, Tyr. & G. 17.

(*t*) *Wimbled* v. *Malmberg*, 1 Esp. 454.

(*u*) *Oxford* v. *Cole*, 2 Stark. 351.

Assignment of term of apprenticeship, not liable.

In a settlement case, the father of the pauper signed a paper, whereby he agreed to give the pauper's master 8*s.* for the term of his apprenticeship; this memorandum was offered in evidence to prove that the pauper had served a portion of his time in another parish, with his master's consent; and it was held that there was nothing to show that the value of the subject-matter of the agreement was 20*l.* (*x*).

The case of *The King* v. *St. Paul, Bedford* (*y*), was somewhat similar to the preceding:—

Agreement to assign an apprentice.

In 1783 the executors of the master of an apprentice, by indorsement on the indenture, agreed to assign the apprentice to a new master, who undertook to teach him, and find him in board and lodging; no stamp was on the indorsement, which was, in consequence, rejected.

It must be observed, however, that at this period, the non-liability on the ground of the value being under 20*l.*, was by way of exemption in a separate clause, and the agreement, (which the instrument was taken to be,) being, *primâ facie*, within the charge, it was incumbent on the party producing it, to bring it within the exemption, to do which, it does not appear that any attempt was made.

Rules of a school, not liable.

The rules of a school under the control of trustees, provided for the dismissal of the then master, in case of disobedience; the master was dismissed, and ejected from his house; and, in an action by him against the trustees, the rules were produced, on the part of the defendants, and objected to, on behalf of the plaintiff, for want of a stamp; but the Court was of opinion that there was no pretence for calling them an agreement, within the Stamp Act, no pecuniary value could be set upon such instruments, which it had never been the practice to stamp, and to insist on their being stamped would be full of inconvenience (*z*).

Engagement at a weekly salary, not liable.

In a recent case, in Ireland, a writing, whereby the plaintiff proposed to superintend the building of a workhouse, and to devote his entire attention to it for the sum of 2*l.* a-week, was held not to require a stamp, the value of the thing contracted for could not be measured (*a*).

Agreement with wharfingers, the

In an action against wharfingers, for the loss of certain goods, a document, acknowledging the receipt of fifteen chests of lac dye, to

(*x*) *Rex* v. *Enderby*, 2 B. & Ad. 205.

(*y*) 6 T. R. 452.

(*z*) *Browne* v. *Dawson*, 12 A. & E. 624; 4 P. & D. 355.

(*a*) *Hickey* v. *Hanley*, 4 Irish Law Rep. 277.

be forwarded, four in a ship, to a person at Leeds, was objected to for want of a stamp; but it was contended on the other side, that the subject-matter of the contract was the amount of the wharfage, 7*s* 6*d*. only; the Judge, with some doubt, admitted the paper, and the Court afterwards refused a motion for a new trial, being of opinion that no stamp was necessary (*b*).

wharfage is the subject-matter.

Again, on the trial of an action against common carriers, a document, by which they acknowledged the receipt of a banker's parcel, value 260*l*., and agreed to deliver it on the following day, was, on the authority of the foregoing case, admitted by *Abbott*, C. J., without a stamp (*c*).

And in an agreement with carriers, the charge for carriage.

In *Baldwin* v. *Alsager* (*d*), the following memorandum was given in evidence, and held by the Court to be rightly received without a stamp, the matter of the agreement, not the value of the goods, being under 20*l*. *viz*.:—

And with warehouseman, for warehousing.

"*Mem*.—Mr. *B*. has left in the cellar at, &c., 72 barrels, containing ale, in Mr. *H*.'s casks, which I agree to allow Mr. *H*. to take from my cellar, at any time, within three months from this date, by receiving one day's notice; and if left in the cellar beyond that time, Mr. *B* or Mr. *H*., or whom it may concern, to pay rent or warehouse room for the same."

An agreement signed by a tenant, engaging to hold premises (worth more than 20*l*.) at 2*s*. 6*d*. a year (*e*), determinable on six months' notice, was received without a stamp, it not being shown that the value of the subject-matter (which Lord *Tenterden* considered to be the right to occupy) was 20*l*. (*f*).

Agreement to occupy land.

So an agreement, (not in law, amounting to a demise,) for letting a shop, at a monthly rent of 1*l*. 16*s*., was held to be admissible without a stamp, as the value could not be predicated to be 20*l* (*g*).

Monthly letting.

In *Doe dem. Marlow* v. *Wiggins* and *Marlow* v. *Thompson* (*h*) the following unstamped document was tendered and received in evidence:—

"I, *John Thompson*, do hereby agree with Mr. *Marlow* to retake

Agreement to rent a field for

(*b*) *Chadwick* v. *Sills*, Ry. & M. 15.

(*c*) *Latham* v. *Rutley*, 2 B. & C. 20; Ry. & M. 13.

(*d*) 14 L. J. R. (N. S.) Exch. 34; 13 M. & W. 365.

(*e*) Mr. Chitty (Stamp Laws, 3rd edit. 11) alludes to a manuscript case of *Doe* v. *Avis*, (no doubt the same,) in which the rent is stated to be 2*s*. 6*d*. *per week*, which is more probably correct.

(*f*) *Doe dem. Morgan* v. *Amos*, 2 Man. & R. 180.

(*g*) *Burton* v. *Reevel*, 11 Jurist, 71; 16 M & W. 307; 16 L. J R (N. S.) Exch. 85.

(*h*) 11 L. J. R. (N. S.) Q. B. 177; 1 Dowl. N. R. 575; 3 Gale & D. 504; 4 A. & E. (N. S.) 367

five months at the rent of 10*l.*, not liable.

of him two acres, &c., from the 10th October, 1840, at which time my tenancy thereof expires, until the 25th day of March, 1841, for the sum of 10*l.*, and I promise the said *W. M.*, in the mean time, a right to plant fruit trees, &c., and to give him quiet possession on the 25th March, 1841."

The subject-matter of this agreement was the interest in the premises, for the period mentioned, the value of which, as contracted for, was 10*l.* The instrument was held not to be a lease.

Agreements for letting land under the yearly rent of 5*l.*

In this case it was argued, from the exemption contained in the Act in favour of agreements for letting land under the yearly rent of 5*l.*, that in all cases of agreement for occupying land, exceeding that value, the duty was payable, whatever might be the extent of the interest contracted for; but the Court was of opinion that the value of such interest must be, in all cases, of the amount of 20*l.*, to make the contract liable; whilst an agreement for letting land under the annual value of 5*l.* was exempt, although, from the duration of the term, the value of the interest exceeded 20*l.* (*i*).

Guarantee given on withdrawing a distress.

On the authority of *Chadwick* v. *Sills* and *Latham* v. *Rutley*, a guarantee, given by the defendant on the withdrawal of a distress made for 24*s.*, was held to be receivable without a stamp, although the amount sought to be recovered in the action exceeded 20*l.*; Lord Chief Justice *Tindal*, who observed that the question must be decided on the words of the statute, inquiring, how it could be said that the agreement was, at the time of making it, one, the matter whereof was of the value of 20*l.*; it might have been of no value at all? and adding, that the party insisting on the stamp must show the value (*k*).

Penalty and damages.

An action was brought for the penalty and damages on the following agreement, *viz.*:—"I, *R. V.*, agree to give up possession of the house, &c., with the good-will, &c., and to bind myself not to open any house or shop, in the same line of business, within one mile, under a forfeiture of 20*l.* to *W. I. P.*; the sum of 7*l.* 10*s.* to be paid to *W. I. P.* on the signing of this agreement." It seems to have been considered that the value was the 7*l.* 10*s.* paid for the good-will, and that the agreement was not, therefore, liable to stamp duty (*l*).

Agreement to pay interest.

By the same course of reasoning as in the preceding cases, a writing in the following words, "I O U 45*l.* 13*s.* which I borrowed

(*i*) See *Doe* v. *Boulcot*, 2 Esp 595.

(*k*) *Cox* v. *Bailey*, 6 Scott, N. R. 798; see also the previous case of *Hill* v. *Ramm*, *ante*, p. 36.

(*l*) *Hemberton* v. *Vaughan*, 11 Jurist, 411; 16 L. J. R. (N. S.) Q. B. 161, 10 A. & E. (N. S) 87

of Mrs. *Melanotte*, and to pay her five per cent. till paid," being considered merely as an agreement to pay interest, which was not necessarily of the value of 20*l.*, was not liable to stamp duty (*m*).

So also a receipt for 170*l.*, with a promise to pay interest for the same at 5*l.* per cent., was, for the same reason, held not liable (*n*).

Sale by auction, each bidding a separate contract.

At a sale by auction of growing crops, four lots were separately knocked down to one person, each at a sum under 20*l.*, but in the aggregate exceeding that amount. An agreement was signed at the foot of the conditions by all the purchasers, whereby they consented and agreed to become the purchasers of the lots set against their names respectively; it was held that this was a separate agreement for each lot, and that no stamp was therefore necessary (*o*).

The converse of this may be said to have been determined in *Chambers* v. *Griffiths* (*p*); which was an action by a purchaser to recover back his deposit, and in which Lord *Kenyon* held, that where several houses were purchased, in distinct lots, at an auction, the contract must be considered as entire, not to be enforced as to one house, to which a good title could be made, unless the vendor was prepared to complete as to all. This was not a question of stamp duty, and the same result might, perhaps, have ensued, even if the contract for each house had been held to be distinct.

Value at the time of the contract to be considered.

Regard must be had to the value of the subject-matter at the time of making the agreement; any alteration of circumstances, by which that value has been subsequently reduced, or any liability lessened, will not affect the question; thus, where a party having been arrested for 37*l.*, and bail having been given, the father of the person arrested undertook, in writing, to hold the bail harmless and indemnified from all costs, charges, damages, and other expenses or liability, which he might incur. Certain expenses were incurred by the bail, for the recovery of which he brought his action, and although they amounted to less than 20*l.*, yet, inasmuch as the original liability extended to the payment of the debt, the subject-matter exceeded that amount, and rendered the agreement liable to stamp duty (*q*).

Indemnity to

In an action against the sheriff for taking the plaintiff's goods,

(*m*) *Melanotte* v. *Teasdale*, 13 M. & W. 216; 13 L. J R. (N. S.) Exch. 358.

(*n*) *Taylor* v. *Steele*, 14 Jurist, 806; 16 L. J. R. (N. S.) Exch. 177; 16 M. & W 665.

(*o*) *Roots* v. *Lord Dormer*, 1 N. & M. 667; 4 B. & Ad 77.

(*p*) 1 Esp. 152.

(*q*) *Wrigley* v. *Smith*, 3 N. & M. 181; 5 B. & Ad. 1117.

sheriff where goods under 20*l.*

which were of the value of 14*l.*, an agreement by the execution creditor to indemnify the sheriff was tendered in evidence, but, being unstamped, was rejected; Lord *Abinger* observing, that there was nothing which limited the indemnity to a sum under 20*l.*, and that if the sheriff were defeated he would expect a great deal more from the execution creditor than 14*l.* (*r*).

This decision would seem to conflict with the foregoing (*Wrigley* v. *Smith*), and with *Doe* v. *Amos;* and, as well, also, with the principle laid down in *Orford* v. *Cole,* as with that which throws upon the party objecting to the want of a stamp, (not being the case of a special exemption from the *primâ facie* charge of duty,) the onus of showing that the instrument requires one; the learned Baron, however, considered, as the parties to it necessarily must have done, that, at the time of giving the indemnity, the actual value of the subject-matter to the sheriff far exceeded 20*l.*; it, at least, extended to the value of the goods, and it was a guarantee, not only against damages to that extent, but such further injury as a jury might think the party seized upon had sustained, and, at all events, against the costs of an action; it amounted, therefore, to a moral certainty that the value exceeded 20*l.*

Agreement postponing the day of completion of a contract.

A question arose in the case of *Bacon* v. *Simpson* (*s*), as to the value of the matter of an agreement, which can, perhaps, be scarcely said to have been decided, as the case was disposed of on another point. By a contract in writing the plaintiff agreed, amongst other things, to sell and assign to the defendant a lease of certain premises for 200*l.*, possession to be given on a day stated, the party making default to pay 500*l.* as liquidated damages. By a memorandum indorsed, not stamped, the completion was agreed to be postponed for a few days; an objection was made to this latter writing for want of a stamp. The Court were all of opinion that it was a new agreement, and liable to stamp duty if the subject-matter was of the value of 20*l.* *Parke,* B., declined to give an opinion on this point, doubting whether it would not be going too far, to say that it was of that value; the other Barons were of opinion that the subject-matter of the indorsement was the whole matter of the contract. A question as to value does not appear to have been suggested in *Stephens* v. *Lowe, ante,* p. 31; which case seems parallel with the present.

As to the value

In *King* v. *Corry* (*t*), on a trial at *nisi prius* in Ireland, Mr

(*r*) *Shepherd* v. *Wheble,* 8 C. & P. 534.

(*s*) 3 M. & W. 78.

(*t*) Irish Cir. Rep. 405

Justice *Crampton* allowed an unstamped agreement to be read, it not appearing, on the face of it, that the value amounted to 20*l.*, although it was conceded that the value exceeded that sum. This view is, it is respectfully submitted, manifestly erroneous, being contrary to the tenor of all the cases upon the subject.

appearing on the face of the instrument.

LETTERS.—It will be observed that the lower duty (2*s.* 6*d.* by the 7 Vict. c. 21, in lieu of 20*s.* by the 55 Geo. III. c. 184) is imposed only on agreements not exceeding fifteen common-law folios, and that an agreement, containing more than that quantity of words, is chargeable with 35*s*, and a further progressive duty of 25*s.* for every entire quantity of fifteen folios, after the first fifteen; but that where letters are produced, to prove an agreement between the parties who shall have written them, it is provided, that a single stamp of 35*s.*, upon any one of such letters, shall be sufficient, although the same shall, in the whole, contain twice fifteen folios, or upwards; in reference to which provision, the words "between the parties who shall have written such letters," have received an extended signification, by including the agents of the contracting parties (*u*).

Letters.

Letters between parties and their agents subject only to one stamp.

The effect of this enactment has been questioned in the instance of several letters containing an agreement, the aggregate number of folios in which does not exceed fifteen. An objection was raised in *Parkins* v. *Moravia* (*x*) to a 20*s.* stamp in such a case, and the point was reserved; a special case was suggested, and agreed to, but it does not appear to have been argued.

Several letters containing less than fifteen folios.

The same point was again discussed in a late case in the Court of Common Pleas (*y*), but it was not necessary to decide it, the letter upon which the stamp was impressed being held to constitute the agreement.

The Court, in *Peate* v. *Dicken* (*z*), decided that two documents, constituting one agreement, were, on reference to the principle of several letters, liable to one stamp duty only; and if that decision be well founded, there can be no doubt that several letters evidencing an agreement, with a stamp of 2*s.* 6*d.* only, may, independently of the special provision as to letters, be read, if the quantity of words do not exceed fifteen folios; although, perhaps, it might fairly be questioned, whether the clause was not intended to extend to all cases of letters. It would seem, however, following, as it

(*u*) *Hemming v. Perry*, 2 M. & P. 375; *Grant* v *Maddox*, 15 L. J. R. (N. S.) Exch. 104.

(*x*) 1 C. & P. 376

(*y*) *Schultz* v. *Astley*, 2 Bing. N C. 544.

(*z*) 1 C. M & R 422; 5 Tyr. 116.

does, by way of proviso, immediately after the charge of progressive duty, to recognise the principle in *Peate* v. *Dicken*, that several documents, whether in the shape of letters or otherwise, might constitute one agreement, and be subject only to one stamp duty.

Several papers forming one agreement, liable only to one stamp.

SEVERAL PAPERS OR WRITINGS.—*Peate* v. *Dicken* was the case of two separate undertakings given by different persons, one in consideration of the other, and both in relation to the same matter; the plaintiff gave one in evidence *properly stamped*, and then offered the other, which, being unstamped, was objected to, but it was admitted; and the Court, on a motion to set aside the verdict, was of opinion that it was properly received, as the two documents, in fact, formed only one agreement; the Lord Chief Baron (*Lyndhurst*) observing, that the Court thought that the case fell within the same rule as that of several letters evidencing one agreement, in which it was provided, that a stamp of 35*s*., upon one letter, should be sufficient for the whole.

His Lordship did not mean it to be inferred, that the special provision relating to letters was applicable to several papers (not letters) forming one agreement, and that, therefore, a stamp of 35*s*. would be sufficient for any number of words contained in such papers; but that the clause had established a rule, or rather had proceeded upon an assumption, that where a contract was made, or evidenced by more papers than one, still only one stamp duty would be payable; and had provided, that in the case of letters, only a certain limited amount of duty should be charged, although, but for such provision, progressive duties would attach.

Where, upon a letter containing certain terms, the person to whom it was sent wrote a memorandum consenting, and a third person afterwards wrote a guarantee, one stamp was considered sufficient.

A. and *B*. having engaged in a mercantile transaction, the former, under date of 29th Dec. 1819, wrote, from London, to the latter, at Drontheim, stating, that having paid for the chief part, and come under acceptances for the remainder of the cargo, he had drawn upon *B*., and desiring him to accept, and to remit the proceeds of the cargo to *A*. or his (*B*.'*s*) father to meet the payment, pledging himself as to the appropriation, and stating the proportions of profit or loss of each, &c. At the foot of the letter, *B*. wrote a memorandum agreeing to it; and, on the back, *B*.'*s* father, on the 26th Feb. 1820, wrote an undertaking to pay over all the money and bills that should come to his hands, and to be responsible for the proceeds of the shipment, &c. In an action against

the father on this guarantee, the paper was produced with a stamp of 35*s.* on it, and it was objected that it contained two separate agreements, one with the father, and one with the son; but the Court held that it was one transaction, and that a single stamp was sufficient (*a*).

See "INSTRUMENTS" as to writings liable to several stamp duties as distinct instruments.

Exemptions.

Goods. *Statute of Frauds.*

RELATING TO THE SALE OF GOODS.—Questions on executory agreements in relation to this exemption, are somewhat analogous to those in reference to the Statute of Frauds as to the sale of goods (before Lord Tenterden's Act); but the Courts have gone much farther, with the view to bring cases within the exemption, than to take contracts out of that statute; such cases may, therefore, be said to be more than covered by the exemption; and as reference has been made to some of them, on questions relating to the exemption, they may, with propriety, be glanced at in this place.

Executory contracts. Making a carriage.

Towers v. *Osborne* (*b*) may first be referred to. The contract in that case, was for a chariot, to be made by the plaintiff, which the defendant, when it was finished, refused to take; and *Pratt*, C. J., ruled that the case was not within the Statute of Frauds, which relates only to contracts for the actual sale of goods where the buyer is immediately answerable, without time given by special agreement, and the seller is to deliver the goods immediately.

Delivery of wheat.

Clayton v. *Andrews* (*c*). The defendant agreed to deliver in three weeks, or a month, a certain quantity of wheat to be paid for on delivery, the wheat being then unthreshed. Lord *Mansfield* referred to *Towers* v. *Osborne*, making a similar remark to that of Chief Justice *Pratt*. This decision may be said to be overruled.

Delivery of flour.

Rondeau v. *Wyatt* (*d*). In this case, which was that of an executory agreement for the delivery of flour, the Court seemed to doubt the propriety of the judgment in *Clayton* v. *Andrews*, but, in deciding the principal case to be within the statute, they drew a distinction between it and the other, that something remained to be done to the articles in that case.

The like

Garbutt v. *Watson* (*e*). This was the case of an agreement with a miller for the sale of flour, to be got ready to be shipped;

(*a*) *Stead* v. *Liddard*, 8 Moore, 2; see *Morley* v. *Hall*, *ante*, p. 35.
(*b*) 1 Strange, 506.
(*c*) 4 Burr. 2101.
(*d*) 2 H. B. 63.
(*e*) 5 B. & Ald. 613.

no memorandum in writing was made, nor any earnest paid, nor was the flour then prepared, so as to be capable of delivery. The Court held it to be a contract for the sale of goods within the statute. *Abbott*, C. J., observed that *Towers* v. *Osborne* was an extreme case, and ought not to be carried further. *Bayley*, J., considered that *Clayton* v. *Andrews* was corrected by *Rondeau* v. *Wyatt*: *Holroyd*, J., could not agree with *Clayton* v. *Andrews*

Foreign stock.

A contract for the sale of foreign stock (Spanish) was held not to be within the Statute of Frauds, as relating to a sale of goods (*e*).

Exemption.

For making machines.

The following are cases under the Stamp Act. An agreement for making certain machines was held, in *Buxton* v. *Bedale* (*f*), not to be exempt as relating to the sale of goods; like *Towers* v. *Osborne*, it was executory. This case is considered as overruled also.

Subscription for engravings.

In *Boydell* v. *Drummond* (*g*), Lord *Ellenborough* seemed to incline to the opinion, that a subscription for a series of copper-plate engravings, to be published annually, was not within the exemption.

For supplying oil not yet produced.

An agreement to sell a quantity of oil, for the manufacture of which the defendant had the seed, but which was not then crushed, was held, in *Wilkes* v. *Atkinson* (*h*), to be exempt from stamp duty as relating to the sale of goods; *Gibbs*, C. J., remarking, that it was out of all common sense to say that it was not a contract relating to the sale of goods, wares and merchandises; that an objection might, with equal propriety, be made in the case of a baker who contracted to sell loaves, because the flour had not been converted into bread; or of a butcher agreeing to supply meat, the beasts not being yet killed.

Making marble chimney pieces.

An agreement for supplying several marble chimney-pieces, to be finished in a tradesmanlike manner, at certain prices, was held, by *Abbott*, C. J., to come within the exemption; the circumstance that something remained to be done making no difference (*i*).

Goods not manufactured.

In an action for breach of contract for not supplying goods, the following paper was read, *viz.*: "Mr. *J. D.*, *Cr* from *L.* and *B.* [here followed an enumeration of the articles, with the prices annexed.] This order to be executed at above prices.—*J. B.* For three months' acceptances on delivery of goods."

It was objected that, as the goods were not all manufactured, the paper was not admissible, without a stamp, the contract being

(*e*) *Heseltine* v. *Siggers*, 18 L. J. R. (N S.) 166.
(*f*) 3 East, 303.
(*g*) 11 East, 141.
(*h*) 6 Taunt. 11; 1 Marsh, 412.
(*i*) *Hughes* v. *Breeds*, 2 C & P. 159.

executory, but the Court seemed to be of opinion that it was within the exemption. The case was disposed of on another ground (*k*).

A contract to supply a house and buildings with water, by means of pipes to be laid down by the water company, Lord *Tenterden* held to be also within the same exemption (*l*). For supplying water.

In *Pinner* v. *Arnold* (*m*), an agreement between a press maker and copperplate printers was given in evidence, whereby the former agreed to make a very superior grand eagle press, to be complete for a certain sum, portions of which were to be paid from time to time previous to the delivery, the remainder within six months, the press to be ready within three months, and to be warranted for twelve months. The Court held this to be an agreement relating to the sale of goods within the exemption; the case of *Buxton* v. *Bedale* was considered as overruled by *Wilks* v. *Atkinson* and *Garbutt* v. *Watson*. Mr. Baron *Parke*, however, observed, that if the maker had agreed to fix the press to the floor, or to the wall, he should have doubted, because it would be the same in principle as a contract to erect a pillar. This view was adopted in the case of *Chanter* v. *Dickenson* (*n*), in which the plaintiff tendered the following document:—"To Mr. ——. Send me a licence to use two of *Chanter* and Co.'s patent furnaces, for which I agree to pay Mr. *Chanter* or his order as ag. 25*l*. as a patent right, and which is to include iron-work, fire-bricks, and labour. Signed *N. D.* Remarks—to be paid for net cash in one month, engineers' or furnace boilers' time to superintend or fix the above; order to be paid 6*s*. per day, and also expenses if the distance exceeds three miles." This was held to be an agreement for something else than the sale of goods; it was for a licence to use an article, although a licence was not sent, and was unnecessary; but, besides, there was time and labour to be bestowed, the articles were to be fitted up, &c. For making a press. For supplying patent furnaces.

It was laid down in this case, that where an instrument is *primâ facie* within the charge, it is for the party contending for the exemption to show that it extends to the instrument.

In an action for work and labour for printing calico, a writing For printing calico.

(*k*) *De Fries* v. *Littlewood*, 9 Jur. 988.

(*l*) *The West Middlesex Waterworks Company* v. *Suwerkropp*, 4 C. & P. 87; Moo. & Mal. 408.

(*m*) 2 C. M. & R. 613; Tyr. & G. 1; 1 Gale, 271.

(*n*) 12 L. J. R. (N. S.) C. P. 147; 5 M. & G. 253; 2 Dowl. N. R. 838; 6 Scott, N. R 182.

containing the terms on which the work was to be done, was held by Lord *Tenterden* not to be within the exemption (*o*).

Agreement to quarry stone.

A contract between the plaintiff, a quarryman, and an iron company, whereby the former, who alone signed the memorandum, engaged to quarry a certain quantity of stone to complete a wall, at a certain sum per perch, was held not to be a contract for the sale of goods; it was also suggested that it was exempt as relating to the hire of an artificer, but no notice seems to have been taken of the argument on this point (*p*).

Right to exemption not affected by secondary matter.

If the primary object of the writing be the sale of goods, the right to exemption is not affected by reason of its containing a secondary or collateral matter, but it is otherwise where the proposition is reversed.

Indemnity by a broker of his employer against loss by resale of goods exempt.

The plaintiff in *Curry* v. *Edensor* (*q*), through the medium of the defendant, a broker, purchased a quantity of cotton, and the defendant, for a certain per-centage, engaged to indemnify the plaintiff against a loss on the resale; the agreement was expressed by the letter "G" written on the contract between the buyer and the sellers, which was proved to mean "guarantee;" it was objected, that although the contract for the purchase of the goods was exempt, such exemption did not extend to the agreement between the buyer and the broker, but the Court held, that the latter was made at the time of the original contract, and related to the sale of goods, and was therefore exempt.

Guarantee for goods sold to a third person, exempt.

A guarantee for the payment for goods to be supplied to a third person, although a commission be stipulated for, is exempt, as a contract relating to the sale of goods (*r*).

Exemption not affected by a special stipulation.

A stipulation for an indemnity against the claim of a third person in respect of the goods sold, was held not to affect the right to the exemption. Where goods, which had been sold, came to the hands of another person, who refused to give them up, and for which trover was brought, terms were proposed to the person so holding possession, who wrote a letter to the owner, accepting the terms, and stating the proposed mode of payment for the goods, at the same time stipulating for an indemnity against the claim of the original buyer; the paper was admitted without a stamp, as relating to a sale of goods, notwithstanding these special provisions (*s*).

(*o*) *Fielder* v. *Ray*, 4 C. & P. 63.
(*p*) *Hughes* v. *Budd*, 8 Dowl. 478.
(*q*) 3 T. R. 524.
(*r*) *Warrington* v. *Furbor*, 6 Esp. 89; 8 East, 242; *Watkins* v. *Vince*, 2 Stark. 368; *Sadler* v. *Johnson*, 16 L. J. R. (N. S.) Exch. 178.
(*s*) *Heron* v. *Granger*, 5 Esp. 269.

Again, an agreement to sell a ship, where a part of the money was to be secured on mortgage, the vendor to procure the ship to be chartered to London, the earnings to be paid to the vendor as part of the price, the mortgage to be closed on her arrival at London; was held not to be taken out of the exemption by reason of the special matter (*t*). In cases of this kind, it may, with propriety, be said, that the sole object of the contract is the sale of the article, all the special stipulations are only the terms of the sale. It was contended in this last case that the contract related to two independent things, the one that of selling the ship, the other that of procuring her to be chartered.

Where the sale of goods is secondary, not exempt.

But where the sale of goods is only a secondary object, it is not within the exemption; which was the case in *Smith* v. *Cator* (*u*). A letter was written by principals to their factors, inclosing bills for acceptance, and engaging to provide funds, should certain quantities of grain in the factors' hands, against which the bills were drawn, remain unsold at the time of their falling due, and promising to send bills of lading for certain other quantities of corn for sale by the factors; the Lord Chief Justice admitted the letter, on the trial, without a stamp, as being within the exemption; but, on motion, the Court determined otherwise; observing, that the description was confined to instruments, whereof the sale of goods was the *primary* object; that here the primary object appeared to be the obtaining of money upon a pledge of goods; it was true that it was further intended that the goods, when placed in the parties' hands, were to be sold, in order to reimburse their advances, but that this was a secondary or collateral object; in *Curry* v. *Edensor*, the primary object was the purchase of goods, to which the guarantee was secondary or collateral.

Memorandum of advance on books for sale.

In *Southgate* v. *Bohn* (*x*), the following paper, *viz.*, "Memorandum of 107*l.* had by me of Mr. *Henry Southgate*, being an advance on books sent in for immediate sale by auction, this 8th day of February, 1845. *John Bohn*," was held to be exempt, the primary object of the parties being an immediate sale of books, not, as in *Smith* v. *Cator*, a loan of money on pledge.

List of goods ordered.

In an action against the manufacturer, for not delivering goods made for the plaintiff, a memorandum, signed by the plaintiff, containing merely a list of the goods ordered, was objected to; either it was executory, and could not be read for want of a stamp, or

(*t*) *Meering* v. *Duke*, 2 M. & R. 121; *Tooke* v. *Meering*, D. & L. 36.

(*u*) 2 B. & Ald. 778.

(*x*) 16 M. & W. 34.

to relate to an interest in land; the potatoes were to be taken immediately. Lord *Ellenborough* was not disposed to extend the case of *Crosby* v. *Wadsworth;* and *Bayley*, J., observed, that in that case, and in *Waddington* v. *Bristow*, the purchaser had an immediate interest in the land whilst the crops were growing to maturity.

The difference between *Waddington* v. *Bristow* and *Parker* v. *Stanyland* was, that in one case the crop was growing, and in the other it was at maturity, and this constituted the only distinction; except that, in the latter, the purchaser was, himself, to go upon the land to get the crop, which, however, was not considered as giving him an interest in the land. Referring to these cases, the criterion would seem to be, whether or not the crop is, at the time of the contract, in a condition to be gathered, and the circumstance of the amount of payment depending upon the quantity, when at maturity, does not appear to affect the question.

The like.

Warwick v. *Bruce* (*k*), was determined to fall within *Parker* v. *Stanyland;* the plaintiff agreed to buy of the defendant all the potatoes growing on 3½ acres of land, at 25*l.* per acre, to be dug up and carried away by the plaintiff. The contract, certainly, describes the potatoes as *growing*, but Lord *Ellenborough* observed, that if this had been a contract conferring an exclusive right to the land for a time, for the purpose of making a profit of the growing surface, it would be a contract for the sale of an interest in or concerning lands, and within *Crosby* v. *Wadsworth*, but it was for the sale of the potatoes, and whether they were covered with earth in the field, or in a box, it was the same thing.

The like.

The same was likewise decided in *Evans* v. *Roberts* (*l*), where, by a verbal contract, the defendant agreed to purchase of the plaintiff a cover of potatoes, then in the ground, to be turned up by the plaintiff, at a certain price.

The like.

So again in *Sainsbury* v. *Matthews* (*m*), where the purchaser was to pay 2*s.* per sack, and to find diggers.

Crops of corn, potatoes, and grass—goods.

In *Jones* v. *Flint* (*n*), the sale of crops of growing corn and potatoes, and the stubble afterwards, and whatever lay grass was in the fields, the buyer to harvest the corn and dig the potatoes, the seller to have the liberty of turning his own cattle on, and to pay the tithes, was held not to be a sale of an interest in land; growing crops were chattels, and as to the grass, as the seller did not part with the possession, it was mere agistment.

(*k*) 2 M. & S. 205.
(*l*) 5 B. & C. 829.
(*m*) 4 M. & W. 343.
(*n*) 2 P & D. 594.

Growing fruits are not goods and chattels, and a contract for the sale of them is liable to stamp duty (*o*). Growing fruits, an interest in land.

In *The Earl of Falmouth* v. *Thomas* (*p*), it was held, as between the landlord and an incoming tenant, that the right to the growing crops was an interest in land, within the Statute of Frauds. Growing crops, an interest in land.

In an action in the Court of Exchequer in Ireland, relating to the sale of a crop of turnips, sown a short time before, the Court thought the distinction taken in the different cases was too fine; growing crops were, at common law, uniformly held to be goods, they had all the consequences of chattels, and, like them, were liable to be taken in execution; and their Lordships ruled accordingly (*q*). Growing crops, goods.

A sale of timber, then growing, was held, in *Smith* v. *Surman* (*r*), to be a sale of goods and chattels, the price being at so much per foot; and, from the nature of the contract, it was taken to be for the sale of timber felled. Timber, goods

A contract for the sale of underwood, to be cut by the purchaser, was decided, in *Scorell* v. *Boxall* (*s*), to relate to an interest in land. Underwood, lands.

FIXTURES are not goods and chattels within the meaning of the exemption. In *Wick* v. *Hodgson* (*t*), a paper, to the following effect, signed by a broker for an outgoing tenant, was offered, to prove the sale of fixtures, *viz.*: "Received of Mr. *Hodgson* 3*l.* for letting a house to him for seven years. Mr. *Hodgson* to take the fixtures at a valuation if he be accepted as tenant, and in the event of his not being accepted as tenant, the 3*l.* to be returned." *Lee* v. *Risdon* (*u*) was referred to, where it was held, that the price of certain fixtures could not be recovered under a declaration for goods sold and delivered; on the other hand, *Pitts* v. *Shew* (*x*) was cited, which was an action for distraining fixtures, in which it was determined that the value of fixtures might be recovered under the term goods, chattels, and effects. But the Court decided that fixtures were not, in the ordinary legal acceptation, goods and chattels, and that an agreement for the sale of them required a stamp. See also *Horsefall* v. *Key*; "CONVEYANCE ON SALE," *post*. Fixtures.

(*o*) *Rodwell* v. *Phillips*, 9 M. & W. 501; 1 Dowl. N. R. 885; 11 L. J. R. (N. S.) Exch. 217.

(*p*) 3 Tyr. 26.

(*q*) *Dunne* v. *Ferguson*, Hayes, 540.

(*r*) 9 B. & C. 561.

(*s*) 1 Y. & J. 396.

(*t*) 12 Moore, 213.

(*u*) 2 Marsh. 495.

(*x*) 4 B. & Ald. 206.

There is nothing conflicting in these cases, in all of which the proper character of the articles is maintained, as well as in the subsequent case of *Dalton* v. *Whittem* (*y*). That was an action of trover for "goods and chattels, to wit, two metal counters," &c. which had been seized for rent, and it was held that trover would lie. Fixtures cannot be distrained for rent, not being goods, nor capable of being restored in the same state if taken away (*z*) : (but they may be taken in execution :) as soon, however, as they are severed from the freehold they become goods, and may be the subject of an action of trover, although the landlord cannot take advantage of his wrongful act of making them so.

In *Steward* v. *Lombe* (*a*) it was held that a windmill, built of wood, passed to the mortgagee with the freehold, and was not liable to seizure, in the possession of the mortgagor, under an execution against him (*b*).

Agreement for hire of a clerk, not exempt.

HIRE OF A SERVANT.—An agreement for the hire of a clerk is not within the exemption of "Memorandum or Agreement for the hire of any labourer, artificer, manufacturer, or menial servant;" as held by Mr. Justice *Crampton* in *Dakin* v. *Watson* (*c*).

Letters between traders

LETTERS BETWEEN TRADERS.—Another exemption is, of letters containing any agreement (not before exempted) in respect of any merchandise, passing by the post between merchants or other persons carrying on trade or commerce in Great Britain, residing and actually being at the distance of fifty miles from each other. In *Mackenzie* v. *Banks* (*d*), a letter written by the defendant, who carried on the business of his mother, but without any share in it, undertaking to pay a debt of hers, which had been incurred in her business, was held to be admissible without a stamp; being within the exemption, of the same kind, contained in the 32 Geo. III. c. 51.

A letter from an agent of a trader exempt.

Lord Tenterden's Act

LORD TENTERDEN'S ACT.—The exemption in the 9 Geo. IV. c. 14 (*e*) involves a point of some nicety. In all probability, the provision was, merely, a cautionary one ; at the same time, to give any effect to it, at all, it must be held to apply to instruments, which, without it, would have been liable to stamp duty ; and,

(*y*) 3 A. & E. (N. S.) 961 ; 3 Gale & D. 260.

(*z*) *Darby* v. *Harris*, 1 Gale & D. 234.

(*a*) 1 B. & B. 506.

(*b*) See also *Wynne* v. *Ingleby*, 5 B. & Ald. 625 ; *Hallen* v. *Runder*, 3 Tyr. 459 ; and *Twigg* v *Potts*, 3 Tyr 969.

(*c*) 2 Cr. & Dix, Cir. Rep. 225.

(*d*) 5 T. R 176

(*e*) Page 20, *ante*.

therefore, it was determined in *Morris* v. *Dickson* (*f*) that a memorandum, although it may contain evidence of the contract upon which the action is founded, if it be put in, solely, for the purpose of taking the case out of the Statute of Limitations, the agreement being proved by other means, is within the exemption. That was an action of *assumpsit*, for money lent upwards of six years before the action was commenced; and, after evidence had been given of the debt, the following unstamped memorandum, dated within that period, was put in, *viz.*:—"I acknowledge to owe to Mr. *Jas. Morris* the sum of 36*l.*, which I agree to pay him as soon as my circumstances will permit me so to do." Mr. Justice *Littledale* said, that he did not know to what other instruments the exemption could apply; and Mr. Justice *Coleridge* observed, that whenever a writing, not under seal, was given in evidence for the purpose of preventing the operation of the Statute of Limitations, it was an instrument made necessary by the Act; that if there had been no other evidence, then he should have considered that it was put in to prove the debt.

An unstamped agreement admitted to take the case out of the Statute of Limitations.

On the trial of an action of debt (*g*), a promissory note, on an insufficient stamp, was received in evidence under this exemption, to take the case out of the Statute of Limitations, and the plaintiff obtained a verdict; but, on a motion to enter a nonsuit, the Court held that it could not be received, for any purpose. Mr. Baron *Parke* observed, that the general principle was, that every instrument ought to be stamped according to its legal operation; that this was a promissory note, and could not be used as an agreement, and as evidence of an existing contract; that the case differed from *Morris* v. *Dixon*, where the instrument could only operate as an agreement.

An unstamped promissory note not admitted for the same purpose.

The law, as exemplified in these two cases, is sufficiently clear. The instrument to be admitted unstamped, where it is liable to stamp duty, must be an agreement under hand, and chargeable under that head only; had the writing in *Morris* v. *Dixon* been, as in the case of *Jones* v. *Ryder*, a promissory note, or chargeable with duty as such, (and it certainly bordered on an instrument of that description,) it could not have been read. The difficulty, if any, will be in deciding, with reference to the other evidence, when such writings may be received; it must, in all cases, be ascertained whether the debt has been proved to the satisfaction of the jury, before the paper is allowed to be read.

(*f*) 6 Nev. & M. 441; 4 Ad. & E. 845.
(*g*) *Jones* v. *Ryder*, 4 M. & W. 32.

An agreement, admitted in the pleadings, need not be produced to see if it be stamped.

If it be not essential to a party's case that a written instrument should be produced, and the rules of evidence do not require it, he cannot be compelled to exhibit it, upon a suggestion that it might not be stamped; as, in the case of an agreement stated in a bill in Chancery, and admitted by the answer.

See the cases and observations upon this subject in the Introductory Chapter, page 6.

Agreements may be stamped pending a hearing, or trial.

The Court of Chancery will permit a cause to stand over for the purpose of getting an instrument stamped; or will give directions for it to be produced to the Registrar, duly stamped, before the decree is given out;—and, at *nisi prius*, the Judge will afford a party an opportunity of getting an agreement stamped during the trial, if it can be done without stopping, or delaying the cause. For the cases on this subject, and other matters connected with agreements in common with other instruments, in reference to the stamp duties thereon, see "INSTRUMENTS."

And as to questions whether writings are agreements, and chargeable with duty as such, or leases, bills of exchange, promissory notes, or other instruments, see the different heads relating to those particular instruments.

Allowances and Drawback. See "DISCOUNT."

Allowance of Spoiled Stamps. See "SPOILED STAMPS."

Appointments to Offices.

APPOINTMENTS to offices, or employments, are charged with duty under various heads in the Schedule to the Stamp Act, according to the terms usually applied to the instruments by which they are conferred; but where there is no specific charge of duty, in reference to a particular office, and any salary or emolument is attached, the instrument of appointment ranges under the head "GRANT," whether the authority be derived from Her Majesty, or any other person. If there be no salary or emolument, and the instrument be not classed with any of those falling under particular heads, then, if the appointment be by deed, it will be chargeable under that title.

The following are the different heads to which instruments coming within this division are referred, *viz.*:—

COMMISSION to any officer in the Army or Royal Marines.	Army or marines.
COMMISSION to any officer in the Navy.	Navy.
COMMISSION or Deputation granted by the Commissioners of Excise.	Officers of Excise.
COMMISSION appointing a Receiver General of Taxes.	Receiver general.
COMMISSION appointing any Manager or Director of any Lottery.	Manager of lottery.
DEPUTATION or Appointment of a Gamekeeper.	Gamekeeper.
GRANT or Appointment to any Office or Employment, with salary, fees, or emoluments attached.	Offices with salaries.

Umpire.

The appointment of an umpire, in writing, by two arbitrators, was held, in *Routledge* v. *Thornton* (*a*), to require no stamp. This case was decided in 1812, with reference to the 48 Geo. III. c. 149, but the present Stamp Act makes no difference; the appointment, not being by deed, can scarcely be said to come within any particular or general description in the schedule to either Act.

Appointment of assistant overseer, liable before the pre-

A person was elected by the vestry to be an assistant overseer, at a salary of 10*l.* a year, under the 59 Geo. III. c. 12, s. 7, to which office he was appointed by warrant under the hands and

(*a*) 4 Taunt. 704.

sent Poor Law Act.

seals of two Justices. It was held that the appointment required a stamp. *Bayley*, J., doubted whether the legislature contemplated appointments of this description, but it was within the words of the Act, to which effect must be given (*b*).

Exempt.

By the Poor Law Act, 4 & 5 Will. IV. c. 76, s. 86, appointments of paid officers engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor rate, are exempted from stamp duty.

Deputy common keeper.

Two common keepers appointed a deputy, as follows, *viz.*:—

"*Putney*, 12th *May*, 1841.

"THE MANOR OF WIMBLEDON.

"Mr. JAMES ELLIOTT,

"We, the undersigned, having been appointed common keepers for the parish of Putney, hereby nominate and appoint you our deputy for the lower common, and authorize you to act for us, in that behalf, in all things pertaining to the rights and privileges of the lord, &c., with the same power, and in the same manner as it would be our duty to act, &c." No salary or emolument was attached to the office. The Court held that this was no grant of an office; the party was a mere servant of the keepers, who gave him an authority to distrain; the Act, moreover, was intended to apply to offices with salaries or emoluments attached (*c*).

Appointment of secretary by written resolution of a company.

In *Vaughton* v. *Brine* (*d*) no allusion appears to have been made to the liability of the appointment under this head; the question raised there being, whether the resolutions made by a provisional committee of a projected association, by the first of which they agreed to appoint, and by the second, in terms, appointed the plaintiff to be the secretary to the society, were liable to stamp duty as agreements. The observation of Lord Chief Justice *Tindal*, that the writings were not liable to duty as agreements, because it did not appear that the plaintiff was present, or was consulted about the matter, may not, perhaps, be considered as applying, with equal effect, to the question of stamp duty on an appointment. See "AGREEMENT," p. 33.

Letters of attorney.

As somewhat allied to the case of an appointment to an office or employment; in strictness, perhaps, as coming within the same

(*b*) *Rex* v. *Lew*, 8 B. & C. 655; 3 Man. & R. 369.

(*c*) *Roberts* v. *Elliott*, 11 M. & W. 527.

(*d*) 1 M. & G. 359.

general comprehensive description; that of an appointment as an Attorney, to perform certain acts in lieu of the principal, may here be mentioned, although the respective employments, and the appointments to them, are distinct in character, and are not, therefore, to be classed together.

Instruments of appointment of this description are charged as Letters of Attorney, or Deeds of Procuration. Under the former head ("LETTER OF ATTORNEY") will be found different amounts of duty, according to the object for which the instrument is given, concluding with the general description of—"LETTER or POWER OF ATTORNEY of any other kind, or Commission or Factory in the nature thereof;" and under another head is—"PROCURATION—Deed or other Instrument of—" the duty being the same on both, *viz.*, 1*l.* 10*s.*

The words "Commission or Factory" apply only to Scotch instruments, as will be perceived by referring to those titles in the Schedule; and it has been doubted whether "Deeds or instruments of procuration" were not intended to refer to Scotland only; there is nothing, however, in the Act to confine them to that part of the kingdom, and, certainly, the common use of the abbreviated term "proxy" in England, warrants a reference to that particular head.

Authority to indorse bills.

The drawer of certain bills wrote a letter to *B.* in the following terms, *viz.*:—"I hereby authorize you to indorse, or cause to be indorsed, my name on three bills of exchange in your possession; which said indorsements I hereby undertake shall be binding on me. And I further undertake to pay you the amount of the said bills when they become due, if they be not duly honoured at maturity." This was held to be a letter of attorney, requiring a stamp, as such; and not, as insisted, a mere agreement coupled with an authority, and for which an agreement stamp would be sufficient (*e*).

Proxy.

In the *Monmouthshire Canal Navigation* v. *Kendall* (*f*) the point was raised, but not decided, whether a proxy given by a proprietor of Canal shares, as authorized by Act of Parliament, to vote at a meeting of the Company, was liable to stamp duty.

The question has, however, been since decided in the affirmative in the case of *Reg.* v. *Kelk* (*g*). A Commissioner, under certain local Acts, being about to be elected by the proprietors of the lands

(*e*) *Walker* v. *Remmett*, 10 Jur. 380; 15 L. J. R. (N. S.) C. P. 174.

(*f*) 4 B. & Ald. 452.

(*g*) 12 A. & E. 559; 4 P. & D. 185.

included in the Acts, in which election the known agent or agents, for the time being, of every proprietor entitled to vote, authorized by note in writing signed by such proprietor, might, under a provision contained in one of such Acts, vote, the Trustees of certain of the lands signed the following note, *viz.*—

"We, the undersigned, being the major part of the Trustees of the estate of *T. N.* deceased, lying and being, &c., do, by this note in writing under our hands, and in pursuance of the statute in this behalf made and provided, authorize and empower *A. B.*, &c., and any one of them, to act for us in the nomination and appointment of a special Commissioner for the Townships of E. and S. at a meeting appointed to be holden on, &c., &c."

It had been determined, by the trustees, for whom *A. B.* should vote, and he was instructed accordingly; the document was not stamped. The Court held that this was a letter of attorney, or an instrument of procuration within the 55 Geo. III. c. 184. In alluding to the argument that had been urged, that the authority gave no discretion to *A. B.* in voting, the Lord Chief Justice observed, that, supposing it to have any weight, it was not founded in fact, for the instrument made no restriction. A case was alluded to (*h*), where Lord *Tenterden* held that a paper, authorizing a person to sell certain property, and thereout to pay rent and expenses, and his own commission, did not require a stamp; to which it was answered, that this was at *nisi prius*.

It may be said, however, in reference to this last-mentioned case, that no analogy existed between it and the principal one; the authority alluded to was, no doubt, not a substitution of one person for another to perform any act; it was, probably, very little more than an instruction, or direction to act, as an agent, in a certain transaction. As to the argument, in the principal case, that no discretion was given to the attorney, it is apprehended that there is nothing in the point; it cannot, possibly, make any difference how the attorney's hands are tied; he may be appointed to do only a particular act in a particular way; he would, still, be the attorney or procurator, and his appointment would be liable to stamp duty.

Proxies to vote at meetings of joint-stock companies.

A specific duty of 2*s.* 6*d.* is, by the 7 Vict. c. 21, charged on a proxy to vote at any meeting of the proprietors or shareholders of or in any joint-stock company, or other company, or society, whose stock or funds are divided into shares, and transferable; such proxy being, by section 6, made available only for the purpose of

(*h*) *Case* v *Barnard*, 2 Chitty on Statutes, 995, (note)

voting upon any matter at one such meeting, the time of holding whereof shall be specified therein, or at any adjournment thereof; and, by sect. 7, all such proxies are prohibited from being stamped after they are signed; and a penalty of 50*l.* is imposed for signing, or voting, or attempting to vote, under any such unstamped proxy.

It is to be understood that the duty of 30*s.*, imposed by the 55 Geo. III. c. 184 on a letter or power of attorney, is repealed by the 7 Vict. c. 21 only so far as regards proxies whereon the duty of 2*s.* 6*d.* is granted; that is, on proxies to vote at one particular meeting only, of a joint-stock company, or any adjournment thereof; but it is, of course, competent to persons to execute powers of attorney to vote at all meetings of the company; which powers will be subject to the duty of 30*s.*; and may be stamped after they are completed, upon the payment of a penalty, (5*l.*,) or otherwise, as the law may admit, and as the Commissioners of Inland Revenue may, in case any discretion be left to them, think proper.

See *The Trinity House of Hull* v. *Beadle* (1).

(1) 18 L. J. R. (N. S.) Q. B. 78; 13 Jur. 557

Appraisements, and Appraisers. Awards.

THE close affinity between an Appraisement, within the meaning of the Stamp Acts, as interpreted by the Courts of law, and an Award, has given rise to questions necessarily referring to both descriptions of instruments; it will, therefore, be convenient to arrange the cases, and to discuss the points relating to them, under one head. The special enactments applicable to each are, however, distinct.

46 Geo. III. c. 43.

Appraisements.

By this Act an *ad valorem* stamp duty was imposed on every piece of paper, &c. upon which any valuation or appraisement of any estate, property, or effects, real or personal, or of any interest in possession, or reversion, remainder or contingency, in any estate or property, real or personal, should be written; and also a stamp duty on a licence to an appraiser; the provisions of former Acts relating to stamp duties to be applied to such duties.

Who is an appraiser.

Sect. 4.—Every person who shall value or appraise any estate or property, real or personal, or any interest in possession or reversion, or any goods, merchandise or effects of whatever kind or description, for or in expectation of hire, fee, gain or reward, is to be deemed and taken to be an appraiser.

Date and continuance of licence.

Sect. 5.—No person to exercise the calling or occupation of an appraiser without taking out a licence, to be granted by the Commissioners of Stamps.

Licenses issued between the 5th July and the 5th August to be dated on the 6th July; those issued at other times to be dated on the days on which they are issued. Every licence to continue in force until the 5th July following.

Appraising without licence.

Sect. 6.—No person to appraise or value any estate or property, &c. for or in expectation of hire or reward, without being so licensed, on pain of forfeiting 50*l.*

Auctioneers.

Sect. 7.—Provided that auctioneers, duly licensed as such, may act as appraisers without a license under this Act.

Appraisement to be written on stamp.

Sect. 8.—Every appraiser to set down, in words or figures, every valuation made by him, and the full amount thereof, and, within fourteen days, deliver the same, duly stamped, to his employer, on pain of forfeiting for every neglect, or for delivering an appraisement not duly stamped, 50*l.*

Receiving it unstamped.

Sect. 9.—No person employing an appraiser, is to receive, or to pay, or make compensation for making, any such appraisement, unless the same be set down on paper duly stamped, on pain of forfeiting 20*l.*

Only one sheet to be stamped.

Sect. 10.—If more than one sheet or piece of paper be used in writing an appraisement, that only which contains the aggregate amount of the valuation is to be stamped.

Exemptions.

Sect. 11.—Not to extend to valuations made under the order of any Court of admiralty, or vice-admiralty, or any Court of appeal therefrom. See TABLE for present exemptions.

48 Geo. III. c. 149.

The foregoing duties were by this Act expressly repealed, and new duties of the like kind granted in lieu; but, as they were not excepted from the general repeal of all stamp duties contained in the 44 Geo. III. c. 98, they were actually repealed by this latter Act.

Duties repealed and new ones granted.

55 Geo. III. c. 184.

By this Act, the aforesaid duties granted by the 48 Geo. III. c. 149, were repealed, and others, of the like kind, substituted; those on licences being in the following terms, *viz.*

Present duties on appraisements.

LICENCE to use and exercise the calling or occupation of an appraiser, 10*s.*
To be taken out *yearly* by every person who shall exercise the said calling or occupation, or make any appraisement or valuation, hereinbefore charged with a duty, for or in expectation of any gain, fee or reward, *except licensed auctioneers.*
Sect. 8.—The provisions of former acts were kept in force and made applicable to the new duties.

The duties on appraisements imposed by this Act are still payable. See TABLE.

8 & 9 Vict. c. 76.

The duties on licences to appraisers imposed by the last-mentioned Act were repealed, and increased duties granted in lieu, in terms somewhat varied from those in the previous Act as above set forth. See TABLE, "LICENCE." The provisions of former Acts kept in force.

Present duty on a licence to an appraiser.

23 Geo. III. c. 58.
37 Geo. III. c. 90.

By each of these Acts a stamp duty of 5*s.* was granted on an Award.

Awards.

44 Geo. III. c. 98.

By this Act, which repealed all existing stamp duties, a duty of 1*l.* 10*s.* was imposed on an award under hand and seal, or under hand only, made in England, and whether enrolled or made a rule of Court, or not, besides a progressive duty of 1*l.* for every additional quantity of fifteen folios, after the first fifteen.

48 Geo. III. c. 149.

The last-mentioned duties were, by this Act, repealed, and others,

of the same amount, granted, upon any "award in England, and award or decreet arbitral in Scotland."

55 Geo. III. c. 184.

These duties were again repealed, by this Act, and those now payable in Great Britain granted, in lieu. See TABLE, "AWARD."

Ireland.

By the 5 & 6 Vict. c. 82, the duties on appraisements, and on licences to appraisers, as then payable in England, were extended to Ireland for a limited term (since renewed); there being, previously, no duties of the kind payable there. The provisions of the 46 Geo. III. c. 43, were, also, directed to be applied for securing these duties in Ireland.

The duties chargeable on awards, in England, were, by the same Act, made payable also in Ireland, where the matter in dispute was of the value of 20*l.*, or upwards. See TABLE.

As to what is an appraisement.

AN APPRAISEMENT, within the meaning of the Stamp Acts, according to the interpretation given to them, is something more than a valuation made at the instance, and for the information or guidance of one party, merely; it must be the result of a contract between parties, or be binding upon them, either by agreement or operation of law.

Valuation for private information.

Atkinson and another v. *Fell and another* (*a*) was an action for work and labour, in surveying and valuing lands, &c., by two persons, one a farmer, the other a basket maker, who had been appointed by the defendants, the sidesmen of the parish, to value the lands with the view to equalizing the parish assessments; they reduced their valuation into writing, which, it was contended, was liable to stamp duty; but the Court held, that a valuation, made for the private information of the party requiring it, and not obligatory upon the parties interested, nor, in itself, extrinsically, evidence between them, was not within the meaning of the Acts 46 Geo. III. c. 43, 48 Geo. III. c. 149, and 55 Geo. III. c. 184.

A licence is necessary only for a person who exercises

This case extended, also, to the question, whether the plaintiffs were persons who ought to have obtained licences, as appraisers, under the 46 Geo. III. c. 43, and 55 Geo. III. c. 184: upon this

(*a*) 5 M. & S. 240.

point, the view taken by Lord *Ellenborough*, C. J., was as follows, *viz.*:—"The statute 46 Geo. III. c. 43, s. 4, enacts 'that every person who shall appraise any estate, real or personal, in expectation of any hire or reward, shall be deemed to be an appraiser within the Act.' Now, if these words are to be construed literally, the consequence will be, that every person who, in one single instance only, shall happen to make a valuation, must, without regard to circumstances, be subject to the appraiser's duty. But I think the Act of Parliament is not to be so construed; but that, according to its true spirit and intention, the term 'appraiser' is meant to designate a person who bears the known character of an appraiser; and, accordingly, we find the fifth section speaks of the 'calling or occupation of an appraiser;' such a person is, by the Act, obliged to take out a licence annually, and a valuation made by him, in the way of his calling, is subject to a duty. Now, these plaintiffs were not appraisers, in any sense of the word, but one a farmer, the other a tradesman, resident on their own property; but, being from their situation in life, no doubt, acquainted with agricultural matters, were applied to, by the parish officers, to contribute their aid in valuing the parish lands, with a view of equalizing the parish rates. There is, hardly, a farmer in the kingdom, who will not be obliged to take out a licence, if these plaintiffs must. If the case alluded to, of an appraisement relative to the legacy duty, had been merely to guide the party in making probate, I should have thought it would have furnished a strong instance in the present case, but it must be remembered, that the valuer there is, as between the executor or administrator and the Commissioners, *quasi* an appraiser, whose appraisement is not to be for the bare information of his employer, but is to serve as a document before the Commissioners."

The calling of an appraiser.

The language of the statute, in imposing the present duty on a licence, (see TABLE,) is somewhat varied from that in the 55 Geo. III. c. 184, but the opinion here given can, scarcely, be said to be affected by this circumstance.

In assumpsit, for work and labour, defendant pleaded that the work done consisted of an appraisement of goods, which the plaintiff appraised without a licence, contrary, &c. It was held, on demurrer, that the plea, following the words of the statute, was sufficient; that it was not necessary to allege that the plaintiff appraised "as an appraiser;" although, upon a replication, traversing the fact, the plaintiff *might* have been entitled, under *Atkinson* v. *Fell*, to a verdict, on the plea that he did not appraise,

In assumpsit, pleading business done, as an appraiser, without a licence.

Exceptions need not be negatived.

at all, if his appraising was not in exercise of that calling. The Court held, also, that it was not necessary, in the plea, more than in the declaration, to negative exceptions in the same, or a subsequent Act (*b*).

Valuation between partners.

Two partners in a coal mine directed a third person to balance the profit and loss of the concern, and to value the materials and utensils; and each party was to take an article, alternately, at that valuation, till all were divided. The valuation was made, and, at a subsequent meeting, it was agreed that the defendant should take the whole materials, at half the valuation; he took possession, and the action was brought for the amount. It was held, that as the valuation was made for their mutual information, merely, though its terms were afterwards adopted as the foundation of a new and distinct agreement, it was not liable to duty as an appraisement (*c*).

Witness need not produce inventory.

If a broker, who has made an inventory of certain goods, be called to prove the value, he need not produce the inventory if he can speak to the value from recollection (*d*).

Character of instrument; whether appraisement, or award.

The distinction between an appraisement and an award, in reference to the liability to stamp duty, may not, in all cases, be readily discernible; these names are, in fact, to a certain extent, convertible terms, although, for the purposes of the duty, the instruments must not be confounded. Where the question referred is, simply, as to value, the writing, by which the estimate is set out, is an appraisement, merely, within the Stamp Acts, although, in point of law, or of fact, it may amount to an award; but, if any other matter in difference be referred, the determination of the referees is an award liable to stamp duty under that head.

An appraisement may be declared on as an award.

An appraisement, such as is contemplated by the Stamp Acts, is an award in law, and may be declared on accordingly.

In *Perkins* v. *Potts* (*e*) the plaintiff declared on an award, which was merely stamped as an appraisement, and it was contended that, although it had been decided, that where the referees are only to fix prices, an appraisement stamp is sufficient, yet, where the instrument is declared on, as an award, the case is not sustained by producing a writing stamped merely as an appraisement; but Lord *Ellenborough* observed, that an appraisement was, in its nature, an award, as far as the subject-matter went; it was, in name, an ap-

(*b*) *Palk* v *Force*, 12 Jur. 797; 17 L. J. R. (N. S.) Q. B. 299.

(*c*) *Jackson* v. *Stophurd*, 4 Tyr. 330.

(*d*) *Stafford* v. *Clarke*, 1 C. & P 24.

(*e*) 2 Chitty, 399.

praisement, but, in substance, an award, and was final on both parties.

Reference as to value merely is not an award.

In *Leeds* v. *Burroughs* (*f*) an incoming tenant of a farm agreed to take a portion of the stock and implements of the outgoing tenant, at such a sum as certain referees should value and appraise the same; who should also estimate the value of certain repairs to be made good by the outgoing tenant; and the Court held, that as the parties had no contemplation of submitting any differences to arbitration, the appraisement stamp, on which the valuation of the referees was written, was sufficient.

Determination by an inspection of accounts, an award.

A bond was given, conditioned for the due discharge of the duties of clerk, provided that such discharge should be ascertained by the inspection of the clerk's accounts by a third person. In an action of debt on the bond, a paper in such third person's handwriting, was produced, in which he had ascertained the amount of the deficiency in the clerk's accounts, which was objected to, for want of an award stamp; it was contended that by reference to *Leeds* v. *Burroughs* it was not liable to a stamp. *Parke*, J., observed that there was a material difference between the two cases; in that cited, there was merely the valuation of a given subject, in the present, a person was to determine whether anything was due, and he inclined to think that the determination was an award. A verdict was returned for the plaintiff with 1*s*. damages, leave being given to move to increase the damages to the sum stated to be due.

A rule *nisi* was obtained, but, on showing cause, the case was compromised (*g*).

Opinion of counsel.

In *Price* v. *Hollis* (*h*) it was remarked by the Court that the opinion of counsel, given on a case by which both parties agreed to be bound, was in the nature of an award, and became final between them.

And in *Boyd* v. *Emmerson* (*i*) the question arose whether an opinion, so taken, was an award, and, as such, liable to stamp duty; and, also, supposing the opinion to be an award, whether the case, with reference to the progressive duty, was part of it. It did not become necessary to decide these points, but, from the remarks thrown out, during the progress of the argument, it is evident that the inclination of the Court was against the opinion being construed an award; as well as, supposing it to be an award, that the case

(*f*) 12 East, 1.

(*g*) *Jebb* v. *M'Kiernan*, Moo. & M 320

(*h*) 1 M. & S. 105.

(*i*) 2 Ad. & E. 184; 4 N. & M 99.

was part of it; such award beginning, "Upon the facts stated I am of opinion," &c.

Verdict of a jury.

The owner of a horse brought an action against the alleged proprietor of a mining shaft, down which the horse had fallen, and the question was, whether or not the shaft belonged to the defendant; who agreed, that if a miners' jury said it was his, he would pay for the horse. A jury of the *Barmote Court*, in the wapentake of Wirksworth, being called out, found the shaft to be the defendant's. The proceedings of the Court were produced on the tria of the action, and objected to on the ground that they were an award, and not stamped; but the Court was of opinion that they were not an award, liable to stamp duty. Mr. Baron *Parke* observed, that "the award stamp is imposed only on instruments which, on the face, purport to be awards. If two persons agree to refer a case to counsel, and to be bound by his opinion, if the opinion do not contain the evidence of the agreement, it is not liable to an award stamp; so also, to take an extreme case, if two persons agree that a third person shall decide a particular fact in dispute by putting a mark on a piece of paper, if he did put a mark on it, the paper would not appear to be an award, and would not require a stamp" (*k*).

Settlement of accounts between coach proprietors.

Carr v. *Smith* (*l*) was an action by one coach proprietor against another, a copartner, for money due to him on a monthly account. The accounts of the whole concern were, according to the general usage in such cases, sent to a person to settle, as between all the partners, who stated the amount of profits to each party, showing what each had to pay to, or receive from another. It was insisted, for the plaintiff, that this was a monthly settlement of accounts, binding upon all parties, upon which one partner could sue the other; for the defendant it was contended, that if this was so, the adjustment amounted to an award, and ought to be stamped. The Court considered that the adjustment and settlement was never agreed to by all the partners; that if it was binding and conclusive it must have been so by reason of the power confided to the persons who drew it up, in which case it would be an award, and would require a stamp. In *Goodyear* v. *Simpson* (*m*) it was held that these monthly accounts between coach proprietors, made out by a clerk of one of the partners, were not awards.

Alteration in an award.

As to the effect of an alteration in an award by the arbitrator,

(*k*) *Sybray* v. *White*, 1 M. & W. 434; Tyr. & G. 746; 2 Gale, 68.

(*l*) 5 A. & E. (N. S.) 128.

(*m*) 15 L. J. R. (N. S.) Exch. 192.

after it is made, see *Henfree* v. *Bromley* under the head "INSTRUMENTS."

Community of interest in parties agreeing to refer; one stamp only necessary.

Goodson v. *Forbes* (*n*) was the case of several underwriters on a policy agreeing to refer a question in dispute by an agreement having one stamp only; and of an award thereon upon one stamp; and in which it was held that the stamps were sufficient. See "INSTRUMENTS."

Appointment of umpire.

The appointment of an umpire in writing, by two arbitrators, was held to require no stamp in *Routledge* v. *Thornton* (*o*).

An award not a conveyance.

In *Doe* v. *Preston*, (see "CONVEYANCE ON SALE,") an award, under an inclosure Act, by which the Commissioners awarded certain allotments to a person who had agreed to exchange other lands for them, paying also a sum of money, was held not to be liable to stamp duty as a conveyance.

Authority to receive money indorsed on award.

By an unstamped indorsement on an award, a party, in whose favour it was made, authorized a third person to receive the money awarded, under which authority the demand was made; and upon non-payment the defendant moved for an attachment. *Gould*, J., doubted whether this was sufficient without a power of attorney, but the Secondaries saying it was usual, a rule was granted (*p*). No doubt, the learned Judge was right, in saying that no demand by another party was sufficient, in such a case, without a power of attorney; in all probability the writing constituted such an authority; and, if so, it should have been stamped, there being then, as now, a specific duty on a letter of attorney.

Time of objecting to want of stamp.

An award cannot be set aside on the ground of its not being duly stamped, although no step can be taken upon it in that state. See *Preston* v. *Eastwood* (*q*) under the head "INSTRUMENTS."

But if, on obtaining a rule to show cause why an award should not be set aside, the objection as to the stamp be not alleged as a ground for the rule, the Court will not allow it to be afterwards relied upon, when cause is shown (*r*).

Awards by deed prior to 44 Geo. III. c. 98.

Previously to the consolidation of the stamp duties by the 44 Geo. III. c. 98, it was considered doubtful what duties were chargeable on awards under seal. The first duty, specifically imposed, on awards, is that in the 23 Geo. III. c. 58 before mentioned, and it appears to have been supposed that this duty (as well as, subsequently, the further duty granted by the 37 Geo. III.

(*n*) 1 Marsh. 525.
(*o*) 4 Taunt. 704.
(*p*) *Langman* v *Holmes*, 2 W. B. 990.
(*q*) 7 T. R. 95.
(*r*) *Laddell* v. *Johnston*, 2 Tidd's Practice, 844.

c 90) was payable, in addition to the ordinary deed duty, or, where the award under seal was enrolled, to the duty on deeds enrolled. Mr. Heraud, in his book on the stamp duties published in 1805, refers to two cases, stated to have been decided in the Court of King's Bench in November, 1797, but which do not appear to be elsewhere reported, *viz. Webb* v. *Gough* and *Oxenham* v. *Horsfall*, in both of which it was held that an award, under seal, was a deed; and, in the former, that an instrument of that kind, impressed with a stamp duty of *7s.*, (the amount of the duties then payable on an ordinary deed,) was properly stamped; and, in the latter, that such an instrument was not sufficiently stamped, with, merely, the specific award duty of *5s.*, payable at the date of it. The inference necessarily arising from these cases, however, is, that where the award was a deed, the deed duty, and that only, was payable; but that where it was not a deed, the specific award duty attached. The point was, subsequently to these cases, discussed, how far the sealing of an award constituted an instrument, of that kind, a deed *Brown* v. *Vawser* (*s*) arose in Hilary Term, 1804, previously to the 44 Geo. III. c. 98; there, an award, under seal, was stamped with the award duties, amounting to 10*s.*, and it was insisted that the stamps should have been 25*s.*, as for a deed, but the Court held that, although under seal, as it was not delivered as a deed, there was no occasion for a deed stamp. Mr. Justice *Lawrence* said, that the same question had been several times agitated in that Court, and he thought the final determination was, that if the arbitrator delivered an award under seal, *as a deed*, it must have a deed stamp.

The same question arose in the Court of Chancery, in *Blundell* v. *Brettargh* (*t*), in which an award, under seal, was objected to, not having a deed stamp; the *Lord Chancellor* overruled the objection, observing, that the award was to be by writing under hand and seal, which, when signed and sealed, was constituted an award; and delivery, which is of the essence of a deed, was not necessary to make the instrument an award. His Lordship, afterwards, in giving judgment said, the question may, perhaps, notwithstanding a decision of the Court of King's Bench, admit of some doubt, "as an award may be delivered without being in writing, but if it is to be delivered in writing on a day certain, more especially if the expression is that it shall be ready to be delivered, though the contract might require that it should be delivered as a deed, the mere circumstance that it is in writing will not make it a deed."

(*s*) 4 East, 584. (*t*) 17 Ves. 232.

The point in dispute is only material in reference to awards, of a permanent character, made prior to the 11th October, 1804; the duty on an award, and on an ordinary deed, being the same since that period; *viz.*, 30*s.*, under the 44 Geo. III. c. 98, and 48 Geo. III. c. 149; and 35*s.* under the 55 Geo. III. c. 184.

Ireland

Stamp duties on appraisements, and licences to appraisers in Ireland, were first imposed by the 5 & 6 Vict. c. 82, which extended the provisions of the 46 Geo. III. c. 43, to that part of the kingdom.

Apprentices.

For the stamp duties on indentures of apprenticeship in Great Britain prior to the 44 Geo III. c. 98, see the Table of such duties, and for the provisions applicable to deeds in general, see "Instruments"

8 Anne, c 9

Poundage duties

Sect 32 —By this Act a duty, to be paid by the master, was charged in England, Wales, and Berwick, for the money given with any apprentice, *viz*, sixpence for every 20*s*, where the money did not exceed 50*l*, and one shilling where it did exceed that amount

The premium, &c, to be inserted, and the indenture to bear date on the day of signing

Sect 35 —The full sum or sums received, or, in anywise, directly or indirectly given, paid, agreed, or contracted for, with or in relation to any apprentice, to be written in words, at length, in some indenture or other writing which shall contain the covenants, articles, contracts, or agreements relating to the service of such clerk, &c, and bear date on the day of execution, upon pain of forfeiture, by the master, of double the sum so given, &c, to be recovered at any time within one year after the expiration of the time limited for the service

Indentures executed within the bills of mortality.

Sect 36 —The Commissioners to provide two new stamps to denote such duties respectively. Indentures made in London or Westminster, or within the Bills of Mortality, to be brought to the head office, and the duties for the sums therein inserted paid to the Receiver General, and upon such payment the same to be stamped within one month after the date

Elsewhere

Sect 37 —Indentures made elsewhere to be brought either to the head office, or to some of the officers out of the said limits, within two months after the date, and the duties paid, if brought to the head office the indenture to be immediately stamped, if elsewhere, a receipt to be indorsed, and the instrument delivered back to the party

Sect 38 —The indenture so indorsed, if entered into within fifty miles, to be brought to the head office within three months, if beyond, within six months

If sums not truly inserted, or duties not paid, indenture to be void

Sect 39 —All such indentures wherein such full sums are not truly inserted, or whereupon the said duties are not paid, or tendered, or which are not stamped, or tendered to be stamped within the respective times limited, to be void, and not to be available in any Court or place, or to any purpose whatsoever, and the apprentice to be incapable of being free of any city, or of following his trade, &c

Exceptions

Sect 40 —Not to extend to money given with apprentices put out at the common or public charge of any parish or township, or any public charity

Oath to be made that full sum inserted

Sect. 43 —No such indenture or writing to be given in evidence in any suit brought by any party thereto, unless the party, on whose behalf the same is given in evidence, first make oath that, to the best of his knowledge, the sum therein inserted was the full sum directly or indirectly given, &c.

Anything, not money, given, to be valued

Sect 45 —Where anything, not being money, is directly or indirectly given, assigned, conveyed, delivered, contracted for or secured, to or for the use or benefit of the master, the duties to be paid for the full value of such thing

9 Anne, c. 21.

Sect. 7.—The duties granted by 8 Anne, c. 9, made perpetual, together with all provisions for securing the same.

Sect. 65.—For enabling persons who had theretofore neglected to get indentures stamped, to pay the duties and get the same stamped within a given time.

Extending time to pay duties.

Sect. 66.—If any master hereafter neglect to pay the said rates and duties last mentioned, within the times herein and by the said former Act limited, according to the true intent and meaning of the same, to forfeit 50*l.*; one moiety to the informer, the other to the person who shall sue.

Neglecting to pay duties.

18 Geo. II. c. 22.

Sect. 23.—Extending the time for payment of the duties before omitted to be paid, as in the last Act.

Extending time.

Sect. 24.—If any master neglect to pay the said rates and duties within the respective times limited, to forfeit double the same (over and above the other penalties), for all moneys to be (after 24th June, 1745) given with any apprentice.

For neglect, double duties to be paid.

Sect. 25.—If the master neglect to pay the said rates and duties within the times limited, whereby the penalties by virtue of this Act become charged, and the apprentice pay the same, and the forfeitures incurred by this act, within a year after the same are made payable, (the master not having paid the same, although required by the apprentice so to do,) such apprentice, within three months after payment by him, may demand of his master the money paid to him in respect of such apprenticeship; and if the same be not paid within three months, he may sue for the same. The apprentice on payment to be discharged from his apprenticeship, and from all actions for not serving.

If master do not pay, the apprentice may, and recover back the premium, &c.

Sect. 26.—The apprentice to have the same benefit of the time served with such master as in the case of an assignment.

20 Geo. II. c. 45.

Sect. 4.—Extending the time for payment of the duties heretofore omitted to be paid on payment of double duties as in the last Act.

Time extended.

Sect. 5.—If a master, liable to double duties, pay the same, and tender the indenture to be stamped within two years after the end of the apprenticeship, and before proceedings commenced for the forfeitures, the indenture to be good in law, and the apprentice may pursue his trade, and persons who have incurred any of the penalties to be indemnified.

Double duties may be paid within two years after apprenticeship.

Sect. 6.—If any master, liable to the double duties, do not pay the same within three months after request made, and the apprentice at any time within two years after the end of the apprenticeship pay the same, he may demand and sue for double the sum given in respect of the apprenticeship, and be discharged from his apprenticeship.

If master do not pay apprentice may, and recover double premium.

Sect. 7.—The apprentice to have the same benefit of the time served as in case of an assignment.

Sect. 8.—If the apprentice pay such double duties within two years after the end of his apprenticeship, he may follow his trade; and the indenture to be good in law.

If apprentice pay the duties he may follow his trade, &c.

5 Geo. III. c. 46.

Sect. 18.—For better collecting the said duties, the proper officer of every

Officers of

cities to record particulars.

city, &c., where any apprentice obtains his freedom by servitude, is to enter in a book the name of every such apprentice, the name, &c. of the master, the sum paid, the trade, and the date of the indenture, under a penalty of 20*l.*

Printed indentures to have a notice thereon.

Sect. 19.—All printed indentures for binding apprentices to have a notice printed under the same (in the form given), of the particulars required by law. For selling indenture without such notice to forfeit 10*l.*

39 & 40 Geo. III. c. 84.
41 Geo. III. c. 22.
42 Geo. III. c. 23, s. 7.

Temporary. For authorizing indentures to be stamped, when they have been impressed with stamps of a wrong denomination; and, also, on payment of double duties, within a limited period, where the proper duties have not been paid, or the premiums inserted.

44 Geo. III. c. 98.

New duties.

By this Act all the duties under the Commissioners of Stamps were repealed and others granted in lieu, and amongst them certain duties in Great Britain on indentures of apprenticeship and assignments thereof, the duties on such indentures being in proportion to the sum or value given with the apprentice according to a fixed scale [in the same manner as the present duties].

The new duties to be collected under the former provisions.

Sect. 8.—The duties by this Act granted to be raised, levied, collected, &c., except where any alteration is expressly made by this Act, in such and the like manner, and in or by any of the general or special means, ways, or methods, by which the former duties were raised, levied, collected, &c. And the several persons, and also the vellum, &c., upon which any matter or thing is written, and by this Act made liable to the payment of duty, to be, except where any alteration is expressly made by this Act, subject and liable to all the conditions, rules, &c., to which such persons and such vellum, &c., were generally or specially liable, by any Act or Acts previously in force. And all penalties, powers, provisions, &c., of such Acts (except where expressly altered by this Act) to be applied to the new duties as if re-enacted.

48 Geo. III. c. 149.

New duties.

By this Act the last-mentioned duties were repealed, and others of the same description throughout Great Britain granted; with the like continuance of the provisions of former Acts.

55 Geo. III. c. 184.

Present duties.

By this Act the duties granted by the 48 Geo. III. c. 149 were repealed, and the duties now payable in Great Britain (for which see the TABLE) granted in lieu; the powers, provisions, clauses, regulations, fines, forfeitures, pains, and penalties, contained and imposed in former Acts relating to the duties repealed, and to any prior duties of the same kind or description, being (sect. 8) directed to be of full force and effect with respect to the new duties, and to be applied, so far as the same are applicable, for raising, &c., the new duties, and so far as the same are not superseded by and are consistent with the express provisions of this Act.

The provisions of former Acts to be continued.

IN ORDER to determine whether or not an instrument be a contract of apprenticeship, regard must be had to the object and intention of the parties at the time of perfecting the contract. No particular form of words, nor any particular description of instrument, is requisite to constitute articles of apprenticeship; any writing, whereby the intention is carried out, will be sufficient; but where a premium, or any value, is paid or given, or agreed to be paid or given with the apprentice, some writing, which shall contain the contract, and truly set out the premium, is absolutely necessary; it is not optional with the parties to dispense with it or not; the statute of Anne is compulsory in this respect.

Rule for determining what is a contract of apprenticeship.

Where a premium is paid there must be a contract in writing.

The intention of the parties must govern the construction.

The principle for the interpretation of contracts, with the view to distinguishing between a hiring and service and an apprenticeship, is laid down in *The King* v. *Great Wishford* (*a*); where it was said that every case must depend on the intention, what was contemplated, whether the relation of master and servant, or master and apprentice; the test being, whether the parties contemplated "*teaching and learning*," although the precise words to teach, or to learn, might not be made use of.

At a parish meeting (1774) it was agreed, that an inhabitant should take a pauper, and maintain her, after the manner of an apprentice, until Michaelmas, 1780; to have 20*l.*, and, at the end of that time, to clothe her. This was written in a leaf of a parish book, which was not stamped, and could not, therefore, be read (*b*).

In the report of the judgment, it is stated to have been held, that though a modern Act (31 Geo. II. c. 11) had dispensed with an indenture, it must still be by deed, which is not altogether intelligible, seeing that the Act in question requires a "deed, contract or writing, first duly stamped."

In *Rex* v. *Landon* (*c*), the following unstamped agreement was offered in evidence on an appeal:—

"Nov. 20, 1792. I, *John Mander*, do hereby agree with *J. Claydon*, to serve me three years, to learn the business of a carpenter, the first year to have 1*s.* 2*d.* per day, the second year

(*a*) 5 N. & M. 540.
(*b*) *Rex* v. *Ditchingham*, 4 T. R 769.
(*c*) 8 T. R. 383.

1*s.* 6*d.* per day, the third year 1*s.* 10*d.* per day. Witness my hand. *J. Claydon*; *J. Mander.*"

It was proved that three guineas was paid to *Mander* as a premium. The Court held this to be a contract of apprenticeship, and not being stamped it could not be available; the word apprentice" need not be used, the intention of the parties must control the point.

Mutuality of agreement necessary.

There must, of course, be a mutuality of agreement, not only an undertaking to serve, but a contract to teach. A boy hired himself for a year to a brick-maker, at the end of which service he entered into a written contract, whereby he agreed to serve his master for three years, to learn to make bricks, &c., the master finding him in necessaries; this was held to be a contract of service, and not an apprenticeship; there was no obligation on the part of the master to teach (*d*).

Again, a father made a verbal agreement with a frame-work knitter, that his son should be with him, and work with him for two years, and have what he got, and allow 2*s.* a week out of his gains to the master, *viz.*, 1*s.* for teaching him the business, 9*d.* for rent of a frame, and 3*d.* for the standing. The son served the period, and thereby adopted the contract. This was held to be a hiring and service, and not a contract of apprenticeship (*e*).

The word *hiring* does not forbid the construction of an apprenticeship.

In *Rex* v. *Nether Knutsford* (*f*), a boy agreed to serve under the following memorandum:—"This memorandum made between *Thomas Webb*, weaver, and *George Hamond*, son of *Peter Hamond*, weaver; the aforesaid *George Hamond* of his own free will, together with the united consent and authority of his father, doth covenant, &c., to hire himself in the service of *Thomas Webb*, to labour at the art, mystery, trade or business of a weaver, for the term of three years; his secrets he will heed, all his commands he will strictly observe and obey, &c.; he will serve him for three years. And the said *T. W.* doth covenant, &c., that, as a reward for his faithful labours, he will give him one half of his just earnings, according to the present prices, monthly, be they more or less, and, in addition to wages named, he will give him every other fent [part of a cotton piece], on condition of having the free use of his father's fire, for his son's accommodation; and that, as a complete compensation for the industrious services, he will instruct him, or cause him to be instructed, in all the art, mystery, &c." The memorandum was read over in the presence of all: at the

(*d*) *Rex* v. *Shinfield*, 14 East, 540 370.
(*e*) *Rex* v *Burbach*, 1 M. & S. (*f*) 1 B & Ad. 726.

word "hire" *Webb* gave the boy 1*s.*; the father objected to the words "cause him to be instructed," which were struck out. The Court held this to be a defective contract of apprenticeship, and not a hiring.

The following was held not to be an exceptive hiring, nor a contract of apprenticeship:—"Memorandum of agreement between *A.* and *B.*, of the one part, and *C.* and *D.* of the other. *A.* agrees to hire *C.* and *D.*, and they agree to be hired for three years to dress silk for 10*s* and 12*s.* a week, respectively, for the first three months, and, after that, in proportion to the work done, provided they do a certain quantity, each, per week. *B.* shall receive 6*s.* a week from *A.* for superintending and instructing them, to make them competent workmen; *B.* to be answerable for the work being done in a proper manner" (*g*).

Defective contract of apprenticeship not available as one of hiring and service.

In settlement cases, if the instrument of apprenticeship be defective, the pauper will not be permitted to gain a settlement by service under it, as an apprentice; nor will it be converted into a contract of hiring and service, and, in that respect, entitle him to a settlement (*h*).

Premium.

It will have been seen that, by the 8 Anne, c. 9, the full sum in anywise, directly or indirectly, given or contracted for, with an apprentice, is to be truly inserted in words at length, or the indenture to be void; and that where the thing so given is not money, the duty is to be paid on the value. The present duties are also charged, in the same way, on money or value.

What is chargeable as premium.

Many questions have arisen as to what constitutes money or other things so given or contracted for, within the meaning of the Act, and which ought to be so inserted in the indenture.

Necessaries not liable.

In *Rex* v. *Walton in le Dale* (*i*) the apprentice covenanted to find himself in meat, drink, washing, lodging, apparel and physic; the master covenanting to pay wages when the apprentice was able to work; no duty was paid on the value of that which the apprentice was to find himself, but which it was contended the relation of master and apprentice threw upon the former. The Court said it did not appear but that the wages were equivalent to the maintenance, &c.; Lord *Kenyon* thought they were much more; he believed it was the practice at the Stamp Office to value these benefits to the master. It was held that no stamp duty was chargeable on them.

(*g*) *Reg.* v. *North Owram*, 10 Jur. 1003.

(*h*) *Rex* v. *All Saints*, Burr. S C. 656; *Rex* v. *Highnam*, Cald. 491.

(*i*) 3 T. R. 515.

The same was again determined in *Rex* v. *Leighton* (*k*); Lord *Kenyon* observing, that the relation of master and apprentice never involved the providing, by the former, for the sustenance of the latter, except by express contract; it was a mistake to say so.

The point was once more raised in the *King* v. *Aylesbury* (*l*), where the father agreed to find the apprentice clothing and washing; but the case could not be distinguished from *Rex* v. *Leighton*.

Money given for clothes, not liable.

Where the grandfather of the apprentice, before the binding, agreed to pay the master 30*s*. to clothe the apprentice, it was held that such sum need not be set forth in the indenture (*m*). The master, it seems, had refused to take the boy because he wanted clothes, and the grandfather gave the master the money to lay out for him; it amounted to no more than putting the boy apprentice, ready clothed, constituting the master an agent.

Reservation out of boy's earnings, not liable.

A reservation to the master of part of the apprentice's earnings is not a benefit to the master liable to the duty, the master being, by law, entitled to the whole; this was held in *Rex* v. *Wantage* (*n*), where the master agreed to pay the apprentice full journeyman's wages, but to have 4*d*. out of every shilling of his earnings.

In *Rex* v. *Bradford* (*o*) the apprentice covenanted to "allow the master 2*s*. a week, and to have [ ] wages, and provide for himself;" the Court considered this, in effect, an agreement to pay wages, deducting 2*s*. a week, the order of the words being merely inverted; and as the master was entitled to the apprentice's labour for nothing, it could not be looked upon as a boon to him, and was not, therefore, a sum or value contracted for within the Act (44 Geo. III. c. 98).

Money paid to a third person, not liable.

The money or value must, in order to be subject to the duty, be given or secured for the use and benefit of the master. In *Rex* v. *St. Petrox, Dartmouth* (*p*), the father agreed to bind his son to the son of one *Mary Hayne*, then, himself, an infant, and to give her 20*s*.; which sum the parish had before told the father they would pay with his son, if he would find a master; the money was paid to the father, but he only gave 5*s*. to *Mary Hayne*; no sum was mentioned in the indenture, and the Court held that it was not necessary, it did not appear that *Mary Hayne* acted as agent for her son (*q*).

(*k*) 4 T. R. 732.
(*l*) 3 B. & Ad. 569.
(*m*) *Rex* v. *North Owram*, Burr. S. C. 145; 2 Stra. 1132.
(*n*) 1 East, 601
(*o*) 1 M. & S. 150.
(*p*) 4 T. R. 196.
(*q*) See also *Rex* v. *Portsea*, Burr S. C. 834.

Money promised, or agreed to be paid, by a person not competent to contract, is not a sum within the meaning of the Act. In *Rex* v. *Bourton upon Dunsmore* (*r*), on the binding of an illegitimate child, the husband of the mother agreed to give a premium of 10*l.*, but the master wanted 20*l.*, and the mother came to a private understanding with him to give him something more, but no particular sum; with which arrangement neither the husband nor the apprentice was acquainted; the husband paid the 10*l.*, which sum was inserted in the indenture, and the mother afterwards paid two guineas and a half. The Court held that the proper sum was inserted, the contract with the mother was not binding upon her, and, if binding, there was no specific sum which could be inserted.

Money promised by a person incompetent to bind herself, and an indefinite sum, not liable.

But in a case where the boy's mother, (a feme sole,) engaged to pay the master 1*l.*, in addition to the sum of 4*l.* paid by a charity, which latter sum, only, was inserted, the indenture was held to be void (*s*).

Otherwise where the party is competent, and the sum is certain.

And in *The King* v. *Amersham* (*t*) the indenture was held to be void for want of stating the consideration known to the mistress. In that case the apprentice was placed out by the trustees of a charity, who paid the mistress 10*l.*; but the wife of the apprentice's grandfather had, previously, agreed with the mistress, that the premium should be 25*l.* Until just before the meeting to execute the indenture the mistress knew nothing of the charity, nor did the trustees know anything of the previous arrangement; after the indenture was complete, and the mistress had received the 10*l.*, the grandfather handed to her the additional 15*l.*

If the sum be not truly inserted, a security given for it is not available; and, if it be paid, it may be recovered back, unless the plaintiff be considered *in pari delicto*.

Where the premium is not expressed the instrument is void, and a security for it is not available.

In an action on a note given for an apprentice fee not mentioned in the indenture, the Court held that the consideration, the apprenticeship, wholly failed (*u*).

Stokes v. *Twitcher* (*x*) was the case of an action to recover 60*l.* paid to the defendant by the plaintiff, with his son; which sum not being specified, the indenture was void, and the money was paid without consideration; but at the bottom of the indenture was the usual printed notice that the premium was to be inserted.

But money not inserted can only be recovered back by a party innocent of the fraud.

(*r*) 9 B. & C. 872.
(*s*) *Rex* v. *Baildon*, 3 B. & Ad. 427.
(*t*) 6 Moo. & M. 12; 4 Ad. & El. 508; 1 H. & W. 694.
(*u*) *Jackson* v. *Warwick*, 7 T. R. 121.
(*x*) 8 Taunt. 492.

The Court considered that the plaintiff was not an innocent party, and was not, therefore, entitled to recover. See also *Mann* v. *Lent* (*y*), as to suing on a security given for premium, where the indenture is not stamped.

A reduced premium is the proper sum to be inserted.

The sum actually paid, although a larger sum had previously been agreed upon, is the proper amount to be inserted. *Shepherd* v. *Hall* (*z*) was an action for the recovery of money had and received, on the ground that it had been paid on a consideration which had failed. An agreement was made for binding the son of the plaintiff to the defendant, who was to receive 20*l.*, as a premium; but the defendant, afterwards, said it would make no difference if he received 19*l.* 19*s.* 6*d.*, and he should escape the payment of some duty. This latter sum was paid, and inserted, and it was contended that the indenture was void, the sum *agreed* for not being, truly, stated. But Lord *Ellenborough* said that the sum agreed for, must mean, the sum finally agreed for, and that the indenture was valid.

King v. *Low* (*a*) was a case of precisely the same description, and was attended with the same result.

The *full sum* paid means not a less sum.

The mention of a greater sum, in the indenture, than was actually paid, cannot affect the validity of the instrument. In *Rex* v. *Keynsham* (*b*) the sum inserted was 5*l.* 5*s*, but 4*l* 4*s* only was paid. It was held that by the words "full sum," was meant, that not a less sum should be inserted.

On removal of a pauper, in setting out indenture the amount of stamp duty need not be stated.

On the removal of a pauper, the examination, sent with him, stated that the witness produced an indenture by which the pauper was bound; that the indenture was duly stamped, and that a premium of 6*l* was therein stated to have been paid. A copy of the indenture was, also, sent. One ground of appeal was, that the copy was defective, on the face of it, in not showing what the stamp was; and that it did not appear when it was impressed. The Court held that the stamp was no part of the indenture; the statement that the indenture was duly stamped was sufficient *primâ facie* information both as to the amount of the duty, and the time of stamping, although, in pleading, the word "duly" would not help an imperfect allegation (*c*).

(*y*) Page 84.
(*z*) 3 Camp. 180.
(*a*) 3 C. & P. 620.
(*b*) 5 East, 308.
(*c*) *Reg.* v. *Keighley*, 10 Jur. 492 15 L. J. R. (N. S.) M. C. 102.

EXEMPTION.—The following Exemption is contained in the 55 Geo. III c. 184 (the present Stamp Act), *viz.* :— Exemption.

"Indentures for placing out poor children apprentices by or at the sole charge of any parish or township, or any public charity, or pursuant to the 32 Geo. III. for regulating parish apprentices.

"And all assignments of such poor apprentices, provided there be no valuable consideration given to the new master, other than what may have been, or shall be given by any parish or township, or any public charity." Where the apprentice is bound by the parish or a public charity.

The same exemptions were also contained in the 48 Geo. III. c. 149. A general exemption in the case of the parish, or a public charity, was, likewise, in the 44 Geo. III. c. 98, and in some of the earlier Acts.

It is not essential, to constitute a public charity, that the fund should be of a permanent character. An indenture was held to be exempt, where the premium was paid out of yearly contributions or subscriptions of the inhabitants of a parish (*d*). What is a public charity. Annual contributions by individuals.

The following bequest, notwithstanding the discretion given, was held to be a public charity, *viz.*, "Item, to Clifton, 50*l.*, to be paid as my brother thinks fit, some on't to put out children apprentices" (*e*). Gift of a sum in gross, with a discretionary power as to the objects.

In *Rex* v. *Halesworth* (*f*) the question was, whether the fund was a public parochial fund within the 56 Geo. III. c. 139 (relating to binding out poor apprentices), but in the argument it was admitted that it was a public charity within the Stamp Act, so as to exempt the indentures from stamp duty. The property had been given by one *John Keble*, who in 1652 devised certain lands for the relief of the poor of Halesworth, half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices. In giving judgment Lord *Tenterden* observed, that "in one sense, according to some decisions, the funds are funds of public charities, because the bequest is general, and do not designate the individuals to be benefited." Where the gift is general.

The provisions requiring the insertion of the true premium, and making void a writing which does not contain it, being fiscal regulations merely, for the protection of the revenue, it follows, in the absence of any express enactment to the contrary, that they do not extend to those cases where no duty is payable. *The King* v. *Quainton* (*g*), and the subsequent more intelligible case of *The King* v. *Oadley* (*h*), are authorities on this point. In the latter, a poor The premium need not be inserted where the duty does not attach.

(*d*) *Rex* v. *St. Matthew, Bethnal Green*, Burr. S. C. 574.

(*e*) *Rex* v. *Clifton on Dunsmore*, Burr. S. C. 697.

(*f*) 3 B. & Ad. 717.

(*g*) 2 M. & S. 338.

(*h*) 1 B. & A. 577.

child was bound by indenture, the parish officers giving the master a guinea, and paying all the expenses of the binding, but the premium was not specified; it was held, that, as such an indenture was exempted from stamp duty, it was not necessary to insert the premium.

If payment of a premium be proved it must be shown to be charity money, recital not sufficient.

In the absence of extrinsic evidence establishing a fact tending to invalidate an indenture of apprenticeship, the instrument, if sufficiently stamped according to its tenor, or, not being stamped, if appearing to be exempt, is admissible; but, if such evidence be given, then, any other fact recited in the indenture, and relied on by way of rebuttal, must, also, be proved, the recital not being sufficient. See *Rex* v. *Skeffington* (*i*), which was the case of an unstamped indenture, reciting that a premium was paid to the master out of a charitable fund, where, on appeal, the actual payment of the money was proved, but no evidence was offered to show it to be charity money, and it was held to be incumbent on the party relying on the exemption, to show that it was charity money, and that, in the absence of such proof, the indenture was inadmissible.

Assignment.

Not void if premium not inserted, &c.

ASSIGNMENTS are not within the provisions of the 8 Anne, c. 9, and, therefore, are not void, if the premium be not inserted, or they be not stamped within the time required as to original indentures. This was determined in the case of *Rex* v. *Ide* (*k*), where an apprentice, bound by the parish in 1817, was, in the following year, assigned to another master, to whom 5*l.* was paid, but that sum was not stated in the assignment, which was stamped with 20*s.*, on payment of a penalty, more than six months after the assignment was made.

Term extended by assignment, no additional stamp requisite.

In *Morris* v. *Cox* (*l*) the plaintiff was bound apprentice for five years and a half, and was, by indorsement, assigned to the defendant; who, instead of paying to the plaintiff a part of his earnings, as stipulated in the original indenture, was to find him in food, lodging and clothing, for the remainder of the term, *and for one year more*: the assignment was stamped with 20*s.*, which was objected to as insufficient, two objects being effected, *viz.*, an assignment, and a new apprenticeship for the extended period; but the Court observed, that the Stamp Act contemplated an alteration in the terms; and, in the absence of an express stipulation, held the stamp to be sufficient.

Unstamped as

A testator gave certain real estates, upon trust to bind out

(*i*) 3 B. & Ald. 382.
(*k*) 2 B. & Ad. 867.
(*l*) 2 M. & G. 659; 3 Scott, N. R 568; 5 Jurist, 307.

apprentice, a son of some one of his, or his first wife's relations; and, in case of a deficiency of such descendants, then a son or sons of some inhabitants of certain places. There had been no failure of such descendants; and one of them, in 1821, was bound apprentice by the trustees of the charity, by an unstamped indenture, a premium being paid; some time afterwards the boy was assigned to a new master, the former one returning to the boy a part of the premium, to be paid to the new master, the trustees being no parties to this arrangement. The Court, without deciding whether the original indenture was exempt, as in the case of a public charity, within the 55 Geo. III. c. 184, held that the assignment was not within the exemption (*m*).

Assignment not valid, not appearing to have been made at the *sole* expense of a public charity.

The reason for this decision, (not, perhaps, at first, very apparent,) was, that the money paid to the new master was not given "by any parish or township, or by any public charity," within the terms of the exemption relating to assignments, the trustees not having joined in the assignment; if they had been parties, then it must have been considered as having been paid through them, and as a portion of their fund, and the Court must have decided the question whether or not the charity was a public charity within the Act.

A pauper was bound apprentice in 1814 by the parish, and the master becoming poor, he was assigned, with the consent of two Justices, to a new master; who, in consideration of 3*l.* 10*s.*, accepted the apprentice, and held himself bound by the covenants in the indenture. The assignment not being stamped, evidence was admitted to show that the money was paid by the parish, and that, therefore, the assignment was exempt within the 48 Geo. III. c. 149; and the Court held that it was properly received (*n*).

Evidence admitted to prove assignment exempt.

Time of Stamping.—By the 8 Anne, c. 9, indentures of apprenticeship are required to be stamped with the *ad valorem* duties, thereby imposed, within certain limited periods, and, in default thereof, are (contrary to the law relating to instruments in general) declared to be void; upon this point, and other parts of the old law relating to such instruments, observations will be found at the conclusion of this part of the work (*o*). The following are the cases upon the subject.

Time of stamping. Indentures not stamped within the time limited, void by the old law.

A boy was bound apprentice, and 20*s.* was given to the master, An indenture

(*m*) *Rex* v. *Fakenham*, 2 Ad. & E. 528; 4 N. & M. 553; 1 H. & W. 222.

(*n*) *Rex* v. *Llangunnor*, 2 B. & Ad. 616.

(*o*) Page 88.

is not effective during the period allowed for stamping, if it be not stamped at all.

who never paid the duty of 6*d.* in the pound under the said Act; the case was referred to *Fortescue*, who went the circuit, and he was of opinion, that, as the master was allowed time to pay the duty, the boy gained a settlement during that period, and that it should not be in the power of the master to defeat it by matter *ex post facto*. But, upon debate in B. R., the Court held that this was making the indenture good for one purpose, whilst the Act said it should be void to all intents and purposes; it was a hard case, but they could not break through the positive words of an Act of Parliament (*p*).

Rex v. *Llanvain* (*q*), *Rex* v. *All Saints* (*r*), and *Rex* v. *Holbeck* (*s*) all establish the same point as *Currenden* v. *Laland*, that an indenture of apprenticeship, not stamped within the period prescribed, is not available.

An indenture void under the old law cannot be made available by being stamped with the present duties.

An indenture dated 30th Oct. 1794, whereby a boy was bound apprentice, and with whom a premium of 25*l.* was paid, was stamped with 6*s.*, the amount of the stamp duty on the instrument itself, but it was not stamped, within the time prescribed, with the poundage duty, amounting to 12*s.* 6*d.*, on the premium; before the hearing of the appeal, in which the indenture was proposed to be read, it was stamped with 20*s.*, the duty payable under the 55 Geo. III. c. 184, on payment, also, of a penalty of 5*l.*; but the Court held it to be void, as not stamped within due time under the 8 Anne, c. 9 (*t*).

The provisions of the former Acts kept in force by the 55 Geo. III. c. 184. (See page 74.)

In *Rex* v. *Church Hulme* (*u*) the pauper was bound in 1820, and a premium of 10*l.* paid; the indenture was not stamped till after the order of removal was made. The Court held that the legislature had studiously kept in force all the provisions of former Stamp Acts, and that as the indenture had not been stamped as required by the 8 Anne, c. 9, it could not be received in evidence. It is material to observe, that the distinction between the stamp duty on the instrument, and the poundage duty on the premium, was brought to the notice of the Court in this case.

If an indenture can be stamped there is not a total failure of consideration.

Mann v. *Lent* (*x*) was an action by the indorsee, against the acceptor of a bill of exchange for 30*l.*, the premium agreed to be given with the acceptor's son, on his being bound apprentice to the drawer. The sum was correctly stated, but the indenture was stamped with 20*s.* only, instead of 2*l.*, under the 55 Geo. III. c.

(*p*) *Currenden* v. *Laland*, 2 Stra. 903.
(*q*) Burr. S. C. 236.
(*r*) *Ib.* 656.
(*s*) *Ib.* 198.
(*t*) *Rex* v. *Chipping Norton*, 5 B. & Ald. 412.
(*u*) 5 B. & Ad. 1029, note.
(*x*) 10 B. & C. 877; 5 Man. & R. 660.

184. Notice was given to the plaintiff to prove the consideration given by him, and he not doing so, the defendant proved the above facts; and the question was, whether there was a total failure of consideration for the bill, as between the drawer and acceptor. For the defendant it was insisted, that the indenture was void if not stamped within the time prescribed, and the 8 Anne, c. 9, 5 Geo. III. c. 46, s. 19, and 42 Geo. III. c. 23, s. 7, were referred to. *Jackson* v. *Warwick* (*y*) was also quoted, but there, as observed by the plaintiff's counsel, was an incurable vice, the premium was not mentioned. On the part of the plaintiff the 20 Geo. III. c. 45, s. 5, was referred to, under which the master might procure the indenture to be properly stamped. The Court held that there was not a total failure of consideration; if the father had paid the premium he could not, under the circumstances, have recovered it back; for the son was not only maintained by the master for a time, (he was with him five months,) but he might have compelled the latter to continue his maintenance, by causing the indenture to be stamped.

In the two last-mentioned cases, there is, certainly, a material difference in the nature of the proceedings; there might, nevertheless, at first appear to be inconsistency in the decisions. In both instances the premium was truly inserted, but in one, the indenture, which was properly stamped, was held to be void, because it was not stamped within the proper time; in the other, it was said that the apprentice might have compelled the master to continue his maintenance, by causing the indenture to be stamped; the decisions may, however, be reconciled. In *Rex* v. *Church Hulme*, no doubt, the utmost time, supposed to be allowed for paying the duties on the premium, had elapsed before the indenture was stamped; and, therefore, it was presumed that the instrument was absolutely void in law; whereas, in *Mann* v. *Lent*, it was competent to the apprentice, as the law was understood, at any time during the term of apprenticeship, and within two years after the expiration of it, to require the master to pay the duties, or to pay them himself, and so render the indenture valid. See observations before alluded to (*z*), showing how far the old enactments, as to stamping indentures, are still in force.

The limitation of time for stamping applies only to

The provision in the 8 Anne, c. 9, making indentures void unless stamped within a given time, has reference only to cases where a premium is paid, in respect of which a duty is chargeable; in

(*y*) 7 T. R. 121.

(*z*) Page 88.

cases of premium.

any other case, if the indenture be stamped, at any time, it becomes an available instrument; and the Court will not stop to inquire into the circumstances under which it may have been stamped, nor whether the penalty paid on stamping it was the proper one; nor indeed whether any penalty, at all, was paid (*a*). In *Rex* v. *Preston*, where no premium was paid, (except by the parish,) an indenture, dated 27th April, 1825, remained unstamped till 6th July, 1832, when it was stamped with 20*s.*, on payment of a penalty of 5*l*; and, subsequently, it was stamped with double duty under the 20 Geo. III. c. 45, s. 4, on notice given to his late master by the apprentice. It was objected, that the indenture was void under the 8 Anne, c. 9, and, moreover, that the penalty on stamping should have been 10*l.*, under the 37 Geo. III. c. 136, s. 2; but it was held that the statute of Anne did not apply; and the Court refused to inquire as to the penalty.

Oath as to premium paid.

The oath required by the 8 Anne, c. 9, s. 43, of the amount of premium paid, was, in the following case, supposed to be made at the Stamp Office.

On the trial of an action of covenant (*b*), by an apprentice and his father against the master, on the indenture, in which 48*l.* was inserted as the amount of premium paid, a question arose as to whether or not a larger sum was actually paid, and it was objected that the indenture could not be given in evidence, unless the plaintiffs first made oath as to the real amount; but the counsel for the plaintiffs declined to call them, contending that the statute was, virtually, repealed; and a verdict was returned for the plaintiffs, with leave to move to enter a nonsuit. The Court, on argument, discharged a rule for entering a nonsuit. *Park*, J., observed, "The objection is *strictissimi juris*, and the Court will do all in its power to prevent its being carried into effect; it is well known that the statute is still recognised as existing law; it is singular that to this day no case is to be found, with the exception of *Gye* v. *Felton* (*c*), (where it was not decided,) in which the objection has been raised. It appears to me that the oath is required to be made before the Commissioners; and, although it cannot be presumed that it was done here, yet the stamp is impressed according to the premium, and the officer can only ascertain such amount by the oath of the party requiring the stamp. It does not appear whether any inquiry has been made at the Stamp Office as to the

(*a*) *Rex* v. *Preston*, 5 B. & Ad 1029; 3 N. & M. 31; *Smith* v. *Agett*, 8 Dow. 411.

(*b*) *Stewart* v. *Lawton*, 8 Moore, 414.

(*c*) 4 Taunt 876

practice, or whether the collector or Commissioners require any oath before the indenture is stamped."

Nothing can better exhibit a want of knowledge of the subject than the report of this case, nor show how the enactments prior to the 44 Geo. III. c. 98, are, in some instances, misapplied in reference to the duties imposed by that Act, and subsequent ones; as will be seen in the remarks hereinafter contained.

The expense of the stamp to be borne by the master.

In the absence of any express agreement to the contrary, the expense of the stamp on an indenture of apprenticeship is to be borne by the master, upon whom it is thrown by the 8 Anne, c. 9, s. 32, as well as by the effect of subsequent enactments (*d*).

Indentures void, or not stamped, cannot be used.

It is scarcely necessary to remark, that an indenture of apprenticeship which is void in reference to the stamp laws, or, which is much the same thing, is not duly stamped, cannot be made use of for any purpose.

In *Rex* v. *Edgeworth* (*e*) it was merely stated that the pauper had been apprenticed, but that for want of a stamp denoting the additional (poundage) duty, it was void, and, of course, therefore, was not offered to be read.

Nor secondary evidence given of it, if lost.

Secondary evidence cannot be given of an indenture which is not produced, if it appear that it was not stamped; and the objection is of equal force, although it may come from the person whose duty it was to take care that it was stamped (*f*).

Lost indentures presumed to be stamped.

But if evidence be given of the existence of an indenture of apprenticeship, since lost, it will be presumed to have been duly stamped (*g*).

In *Rex* v. *Long Buckby* (*h*), after thirty years, this was presumed, notwithstanding the proper officer proved that it did not appear that any such indenture had been stamped with the premium stamp, or enrolled, during the whole period of thirty years; the Court considering that the presumption sufficiently rebutted the negative evidence.

Production of indenture to be stamped not enforced.

The Court will not oblige a party in whose hands an unstamped indenture of apprenticeship remains, to produce it to be stamped. In *Rex* v. *Westoe* (*i*), a mandamus to oblige the parish officers to produce an indenture to be stamped, pending an appeal, was refused; the Court not considering it a public document, as relied upon by counsel.

(*d*) *Keene* v. *Parsons*, 2 Stark. 506.

(*e*) 3 T. R. 353.

(*f*) *Aldridge* v. *Ewen*, 3 Esp. 189.

(*g*) *Rex* v *Badby*, 1 Const. 549; *Rex* v. *East Knoyle*, Burr. S. C. 151.

(*h*) 7 East, 45.

(*i*) 5 Ad. & E. 786; 2 H. &. W. 446.

Apprentice bound to different masters by one indenture.

An apprentice may be bound by one indenture, with one stamp, to two separate masters, for distinct terms, to learn different trades. In *Rex* v. *Louth* (*k*) a boy was bound to his father and to a stranger, carrying on separate trades, to serve one for four years, and the other for three; it was held that one stamp on the indenture was sufficient.

Counterpart evidence of the contract.

The counterpart, executed by the master, is evidence against him of the contents of the other part. In an action against a master for the penalty under 8 Anne, c. 9, s. 35, for not inserting in the indenture the true amount of premium paid, the counterpart was produced; but the plaintiff was nonsuited, on the ground that it was not evidence of the binding; the Court, however, on motion for a new trial, held the counterpart to be sufficient evidence of the fact (*l*).

No poundage was payable where premium less than 20*s*.

Where the premium was less than 20*s*. no poundage was payable under the 8 Anne, c. 9 (*m*).

Under the 55 Geo. III. c. 184, the same duty is payable whether there be no premium, or a premium under 30*l*.

The deed stamp of 10*s*. imposed by 37 Geo. III. c. 111, was payable where no premium was paid.

The 37 Geo. III. c. 111, imposed an additional stamp duty of 10*s*. upon every deed, with the following exception, "any indenture of apprenticeship, where a sum, or value not exceeding 10*l*., shall be given, or contracted for, with or in relation to the apprentice;" it was determined that this exception did not apply to a case where no premium, at all, was given (*n*). This decision can only affect indentures executed before the 44 Geo. III. c. 98.

A wrong date does not affect the validity.

An indenture is not void by reason of the insertion of a wrong date, as in the case of a wrong amount of premium; a penalty, only, is incurred, by the master, under the 8 Anne, c. 9, s. 39 (*o*).

As to the old laws being still in force.

OBSERVATIONS.—Showing how far the provisions of the 8th Anne, c. 9, relating to the time limited for stamping indentures of apprenticeship, &c. are applicable to the present duties.

Nearly a total revolution in the duties on apprenticeships was effected by the 44 Geo. III. c. 98; not only were the duties, previously payable, then repealed, but no new *ad valorem* duties, of

(*k*) 8 B. & C. 247; 2 Man. & R. 273.

(*l*) *Burleigh* v. *Stibbs*, 5 T. R. 465.

(*m*) *Baxter* v. *Fanlam*, 1 Wils. 129; *Rex* v. *Yarmouth*, Burr. S. C. 379.

(*n*) *Rex* v. *Mabe*, 3 Ad. & E. 531; 3 Nev. & M. 241; 1 H. & W. 469.

(*o*) *Rex* v. *Harrington*, 4 Ad. & E. 618; 6 Nev. & M. 165.

the same description as the former ones, were granted; and, although *ad valorem* duties were imposed by that Act, it remains yet to be considered, how far the prior enactments, passed for the purpose of protecting the old *ad valorem* duties, continued in force in reference to the subsequent duties. A review of the statutes will be necessary.

5 W. & M. c. 21.—This was the first Act imposing stamp duties; and, by it, a duty, (amongst others,) of sixpence, was granted for every skin or piece of vellum or parchment, or sheet or piece of paper, upon which should be engrossed, or written, any indenture, lease, or deed poll, not otherwise charged; and it was required (s. 9) that the vellum, &c. should be stamped before any matter or thing should be written thereon; and by sect. 11, a penalty of 500*l.*, (afterwards reduced to 5*l.*,) besides certain disabilities, was imposed for writing any such matter or thing before the stamp was impressed; and further, that if any such matter or thing should be so written, there should be due to their Majesties, over and above the duty, for every such deed, &c. 5*l.*

By subsequent Acts additional duties, of the same kind, were imposed, and similar provisions, for securing them, enacted.

8 Anne, c. 9.—By this Act duties of 6*d.* or 1*s.*, according as the sum did, or did not exceed 50*l.*, were granted for every 20*s.* of any sum given with any such apprentice; to be paid by the master.

By sect. 35, the full sum given was required to be inserted in the indenture, which was to bear date on the day of execution, under the forfeiture of double the amount so given.

By sect. 36, the Commissioners were directed to provide two stamps for denoting such duties; and indentures entered into in London or Westminster, or the Bills of Mortality, were to be brought to the Stamp Office, and the duties, for the sums inserted, were to be paid to the Receiver General, and the indentures stamped within one month after the date.

By sect. 37, indentures entered into beyond such limits, were to be brought either to the Stamp Office, or to some officer out of such limits, within two months, and the duties paid; and if brought to the Stamp Office, the indentures were to be stamped at the same time.

By sect. 38, where the duties were paid to such officer, the indentures were required to be stamped within three months, if entered into within fifty miles of the limits; and if beyond that distance, within six months.

Sect. 39, declares that indentures, wherein the full sums are not truly inserted, shall be void, and not available for any purpose.

Sect. 43, provides that no indenture shall be given in evidence in any suit, by any party thereto, unless such party first make oath that the full sum is inserted.

Sect. 45, provides for payment of duty on the value of any thing, not money, given with any apprentice.

9 Anne, c. 21.—By this Act provision was made for the relief of those who had neglected to pay the poundage duties, and a penalty of 50*l.* was imposed for any future neglect to pay the duties within the times therein, and by the former Act limited.

18 Geo. II. c. 22.—Similar relief was afforded by this Act.

Sect. 24, imposed double duty on the master neglecting, in future, to pay the duties according to the former Acts.

Sect. 25.—If the master neglected to pay the duties, the apprentice was to be permitted to pay them at any time within a year after such default, and to recover the same against his master, and be discharged from his apprenticeship.

20 Geo. II. c. 45, s. 4, gave further relief for past neglect.

Sect. 5, allowed the master, where no proceedings had been commenced for forfeitures incurred, to pay the double duties, and get the indenture stamped, at any time, within two years after the end of the apprenticeship, such indenture to be good in law, and all parties to be indemnified, and free from disabilities.

Sect. 6.—Where double duties were incurred, the apprentice might call upon the master to pay them, and if he neglected to do so for three months, the apprentice might pay them, and recover from the master double the premium.

Sect. 8.—Where a prosecution was commenced against the master for double duties, and the apprentice paid the same within two years after the end of the term, the indenture and service were to be good.

5 Geo. III. c. 46, s. 18.—The officers of cities, &c. where freedom was obtained by apprenticeship, were to keep books and enter the particulars of all indentures.

Sect. 19.—All printed forms of indenture were required to have printed thereon a notice of the particulars required by law.

Thus it will be perceived, that, prior to the 44 Geo. III. c. 98, there were two distinct descriptions of duty chargeable in cases of apprenticeship, where a premium was paid, *viz.* :—

1st, a stamp duty on the *instrument* itself, that is, on the parchment, &c., as in the case of other writings, to be paid,

and denoted on the material, *before any thing was written thereon*, by a stamp or stamps expressing the *amount of such duty*.

2ndly, a *poundage* duty on the *premium*, to be paid *after the indenture was executed*, within a certain period; the payment thereof to be denoted by a stamp merely expressing *the rate*, not *the amount*, of such duty.

To protect these respective duties two separate, and totally distinct classes of enactments were passed, the provisions relating to one duty being *altogether inapplicable* to the other.

By the 44 Geo. III. c. 98, all the duties under the care and management of the Commissioners of Stamps were repealed, and new stamp duties granted in lieu, and, amongst others, on *indentures of apprenticeship*, according to the sum or value given or paid with the apprentice; such new duties to be raised, except where any alteration is thereby made, in such and the like manner, and in or by any of the general or special ways, means or methods, by which the former duties might be raised; and under and subject to the regulations, rules and restrictions in the Acts before in force.

The duties by the 44 Geo. III. c. 98, including those on indentures of apprenticeship, were, for the most part, repealed by the 48 Geo. III. c. 149, and others granted in lieu; and, amongst them, *ad valorem* stamp duties on indentures of apprenticeship, as before.

These duties were, again, repealed by the 55 Geo. III. c. 184, and others, of precisely the same description, varying, only, in amount, granted instead.

By sect. 8, of each of these two last-mentioned Acts, it is enacted, that all the powers, provisions, &c., contained in and imposed by the several Acts relating to the duties repealed, and to prior duties *of the same kind or description*, shall be of full force and effect with respect to the new duties, and to the vellum, parchment and paper, instruments, matters and things charged or chargeable therewith, *as far as the same are, or shall be applicable*, in all cases not thereby expressly provided for; and shall be observed, applied, enforced and put in execution, for raising, &c., the new duties.

In inquiring what provisions, prior to the 44 Geo. III. c. 98, remained in force, in reference to the new duties, on apprenticeships, granted by that Act, and still continue in force, in respect of the present duties, the first question is, What is the character of such

new duties? Of which description of the former duties do they partake? The answer is, that they are *stamp* duties *on the indentures;* the same, precisely, as those on any other instruments; and although regulated by the amount of premium, as the duties on other deeds are by the moneys therein mentioned, (as in the case of conveyance, bond, mortgage, &c.,) *they are not poundage duties;* and they are denoted by a stamp, not specifying any *rate of duty,* but expressing the *amount of duty* charged thereon; and that they, consequently, involve only the operation of such enactments as are consistent with that class of duties.

The first of the provisions, in character, as well as in order, is, that the parchment or paper shall be stamped before the matter or thing, in respect of which the duty is payable, shall be written thereon; other provisions relate to forfeitures incurred by writing the same on unstamped paper or parchment, and to the payment of a sum of money, by way of penalty, in addition to the duty, on applying to have the same stamped. This first grand principle, in reference to the duties on stamped vellum, parchment and paper, the consideration of which greatly assists in the elucidation of many points connected with them, that the duties are to be paid, and the material stamped, *before the instrument is written,* should never be lost sight of. So essential was this deemed, that the infraction of the rule involved, at first, the ruinous penalty of 500*l.*; an amount of forfeiture, having regard to the value of money at any period, evidently intended to operate as an absolute prohibition. This principle, although the instrument is now, for the benefit of innocent parties, *permitted,* on payment of an additional sum by way of penalty, to be stamped, is *altogether opposed* to a regulation which, *of necessity requires* the payment of a duty *after the instrument is executed;* and is, therefore, *totally inconsistent* with those provisions in the 8th Anne, c. 9, and the other Acts before mentioned, which relate to the payment of the poundage duties within certain periods. The stamp duties on indentures of apprenticeship are, and have been, ever since the commencement of the 44 Geo. III. c. 98, subjected to the same regulations as those on other instruments, and to those only; if written on unstamped paper or parchment they are, on being produced at the Stamp Office, impressed with the amount of duty to which they are liable, according to the contents; in the same manner as other instruments, and on payment of the same penalty; although, if parties, under an apprehension that the old enactments are in force, desire to pay double

duties, the Commissioners, of course, do not object to receive them.

The reason for the distinction between the two modes provided for paying the duties, one *before*, and the other *after* the instrument is written, will be obvious, on considering the difference in the nature of the duties. In the case of those on the parchment, the stamps were of definite amount, the Commissioners being required to provide a certain number of stamps to denote such duties, and which were applicable to every variety of instrument within the scope of the general description given in the Act; these stamps, therefore, were to be procured of the Commissioners, and the instruments were to be engrossed thereon. With regard to the other duties, it was impracticable to issue stamps for the innumerable variety of cases in which they would be wanted, such duties being, not according to a scale, as in the case of *ad valorem* duties at present, but so much for every pound of the money or value given with the apprentice; the Commissioners were, therefore, required to provide stamps which should denote, not *the amount*, but *the rate* of duty (whether 6*d*. or 1*s*.); and which stamps could only be impressed on the instruments after they were completed, as the duties could not be previously assessed. This is still the case with respect to legacy duties; the receipt for the legacy being brought to the Office filled up, when the duty is assessed, and, on its being paid, the receipt is stamped to denote, not the *amount* of the duty, but the *rate* at which the legatee is chargeable.

Although the regulations as to the payment of the duties within a given period after the date of the indenture, and, consequently, the law declaring the instrument void, if they are not so paid, cannot, by possibility, be now in force, the same being wholly inconsistent with the nature of the present duties; it does not follow that the enactments which require a written contract, containing certain particulars, to be made; and declare every such contract to be void if the premium be not truly inserted; and which impose on the master the penalty of double the amount of the premium, where there is no such contract, or where the premium is incorrectly stated, are not still in force. These provisions are perfectly consistent with the present duties; and are, in truth, essential to the protection of the revenue; as, without them, there is no guarantee whatever for the security of the duties; nor is there any inconsistency in retaining this portion of he old law, however it may be mixed up with other portions,

rejected because inapplicable; the Acts imposing subsequent duties, keeping alive, expressly, only such provisions of former Acts as are applicable to the new duties, and are necessary for securing the same The clause (43) in the 8 Anne, c. 9, requiring the parties to make oath that the full sum is inserted, before the indenture is given in evidence, may be said to be in the same category, and, therefore, to be still in force. It seems scarcely to admit of a doubt, from the terms of the enactment, that the oath was intended to be made in Court, at the trial; at all events it was not made before the Commissioners, or any of their Officers, nor is there any authority given for administering such oath; and, supposing the provision to be still in force, circumstances do not admit of the oath being made at the Stamp Office, as the indenture is not now required to be brought there, in order to the payment of the duty, as under the old law.

The foregoing remarks are made with the utmost deference to the authorities already pronounced on the subject, in some of which cases the distinction between the two different kinds of duties was brought to the notice of the Court, but not effectively.

Articled Clerks.

2 Geo. II. c. 23.
22 Geo. II. c. 46.

By these Acts no person was to be allowed to act as an attorney or solicitor unless he had served as a clerk for five years, and been admitted and enrolled. The articles to be enrolled. Clerks to serve five years.

These Acts have both been repealed by the 6 & 7 Vict. c. 73.

34 Geo. III. c. 14.

By this Act stamp duties were granted on articles of clerkship.

Sect. 2.—No person to be admitted unless his articles, duly stamped, be enrolled; and if not enrolled within six months after the execution, the service to commence from the enrolment. Contracts to be enrolled.

This provision is repealed by the 7 & 8 Vict. c. 86.

Sect. 3.—Affidavit to be made, before admission of the payment of the duty, &c. Affidavit.

Sects. 5, 6.—Persons admitted in one Court may be admitted in any other, without payment of further duty on their articles. One duty only.

Sect. 8.—New articles for the residue of any term not to be chargeable.

See other provisions in the TABLE.

Sect. 10.—The paper to be stamped before written upon.

Sect. 11.—Where there are two parts, or duplicates, one only to be charged with the duty on articles; the other to be stamped with a denoting stamp. Duplicate.

NOTE. The duty on this part is 1*l.* 15*s.*

44 Geo. III. c. 98.
48 Geo. III. c. 149.
55 Geo. III. c. 184.

By these Acts the duties payable at the respective times of their passing were repealed, and others granted in lieu. See TABLE for the present duties. Duties.

1 & 2 Geo. IV. c. 48.

A limited term of service required where certain degrees have been obtained.

Explained by 7 Geo. IV. c. 44.

6 Geo. IV. c. 46.

No person to be disqualified from being admitted by reason of the person whom he served having neglected to take out his certificate. Clerks not to be prejudiced by the attorney not taking out his certificate

NOTE. A similar provision is unnecessarily contained in several annual indemnity Acts; but having ceased to be so inserted after the indemnity Act of the 6 Vict., it was, to obviate all doubt, arising from its periodical

renewal, finally re-enacted, in somewhat more explicit terms, in the 7 & 8 Vict. c. 86; which Act contains certain other provisions omitted in the annual indemnity Act of the same session, not necessary to be again repeated.

7 Geo. IV. c. 44.

Articles not to be stamped after six months.

Sect. 4.—The Commissioners are not to be permitted, under any pretence whatever, after the expiration of six months from the date thereof, to stamp any articles of Clerkship.

NOTE.—By the 7 Will. IV. c. 12, and several other annual indemnity Acts, the months here mentioned are to mean calendar months. The Commissioners will not stamp articles at any time within this period, except on payment of a penalty of 5*l*.

9 Geo. IV. c. 49.

If stamped for inferior Courts may be stamped at any time for superior Courts.

Sect. 4.—Upon payment of the full duty of 120*l*., the Commissioners may, at any time, stamp any articles, under which any person may have served, or become bound to serve as a clerk, in order to his admission in any inferior Court of Record in England, and thereupon, the person having so served, shall be capable of being admitted in any one or more of the Courts at Westminster. Provided that such articles shall have been previously duly stamped.

1 Will. IV. c. 70.

By this Act the Courts of Session and Exchequer in the County Palatine of Chester, and of Great Sessions in Wales were abolished.

Sect. 16.—All persons admitted, and practising in the said Courts, to be entitled, upon the payment of 1*s*, to have their names entered upon a roll, in each of the Courts at Westminster, and to practise therein, in actions and suits against persons residing at the commencement thereof in the county and principality respectively.

On payment of difference of the duty in some cases.

Sect. 17.—Persons admitted in, or having served, or serving attorneys of, any of the said Courts of Session and Great Sessions, may be admitted in the Courts at Westminster, upon payment of the additional duty [on their articles].

2 & 3 Vict. c. 33.

Annual Indemnity Act.

Where articles lost a copy may be enrolled.

Sect. 9.—Where original articles are lost or destroyed, either of the superior Courts at Westminster may direct the enrolment of a copy; upon being satisfied that the duty has been duly paid, and the clerk been serving.

6 & 7 Vict. c. 73.

For consolidating and amending the laws relating to attorneys and solicitors in England and Wales.

This Act provides for the due service of persons to be admitted attorneys and solicitors.

Articles to be enrolled.

Sect. 8.—Affidavit of execution of articles, &c., to be made, and articles enrolled within six months.

Sect. 9.—Provided, that if the affidavit be not filed within six months, it may be filed afterwards, but the service to be computed from the day of filing, unless the Court otherwise order.

7 & 8 Vict. c. 86.

Indemnity as to enrolment.

Sect. 1.—Containing the usual provision in the Annual Indemnity Act as to the enrolment of articles after the lapse of six months, (which was omitted in the Indemnity Act of this Session,) permitting such articles to be enrolled on or before the first day of Hilary Term.

Where articles are not duly enrolled the Court may order service to be reckoned from the date.

Sect. 2.—Where clerks bound by contracts before the passing of this Act, have omitted to enrol such contracts within six months, or within the time allowed hereby, any of the Courts at Westminster may order that the service shall be reckoned from the execution of such contract, or from any subsequent period prior to such enrolment.

Sect. 3.—So much of the 34 Geo. III. c. 14, as relates to the enrolment and registering of articles made after the passing of this Act repealed. Not to be deemed to repeal or alter any of the provisions of the 6 & 7 Vict. c. 73.

Sect. 4.—Clerks not to be prejudiced by the neglect of their masters to take out annual certificates.

No provision for the relief of clerks who omit to enrol their articles within six months, will be contained in any future Indemnity Act; the Courts having power under the 6 & 7 Vict. c. 73, s. 9, as to articles executed after the 22nd Aug. 1843, and under the 7 & 8 Vict. c. 86, s. 2, as to those previously executed, to order that service shall, in any case, be reckoned from the date.

A copy of lost articles may be enrolled.

PREVIOUSLY to the authority contained in the 2 & 3 Vict. c. 33, for directing, where original articles of clerkship were lost or destroyed, the enrolment of a copy, the Courts, in the absence of any statutory prohibition, assumed the power thus expressly conferred; but it is presumed that a doubt as to the propriety of the exercise of such a discretion, gave rise to the enactment. In *Ex parte Clarke* (*a*) the Court ordered a copy of lost articles to be enrolled on an affidavit of the facts; and the clerk was afterwards admitted on production of the copy, and the usual affidavit.

The same was, also, directed in *Ex parte Chapman* (*b*), where it was sworn that the original articles were sent to London to be enrolled, and that a clerk of the agent was employed to get them enrolled who had charged money for so doing, but had omitted to enrol them, and had absconded, the articles themselves not being found. And again in *Ex parte Briggs* (*c*) where the original

(*a*) 3 B. & Ald. 610
(*b*) 3 Dow. 562.
(*c*) 3 Dow. N. S. 94; 1 Dow. & L. 94.

articles were destroyed by fire. In *Ex parte Beckenden* (*d*) the draft was ordered to be enrolled.

If articles be lost after enrolment a certificate of enrolment must be produced.

The production of the articles at the time of the application for admission, and of a testimonial of the Master, of the due service under the same, not being required by any legislative enactment, but by a mere regulation of the Courts, no statutory provision was necessary to authorize the dispensing with these ordinary requisites.

In *Ex parte Nicholls* (*e*) the applicant was admitted on the production of a certificate of the enrolment, instead of his articles, which it was proved were lost, after enrolment, the master having absconded. And in *Ex parte Carr* (*f*), where the master had absconded, his testimonial was dispensed with.

Enrolment of articles *nunc pro tunc*.

The power to enrol articles *nunc pro tunc* was never possessed by the Court, and the exercise of any such right, if assumed, would have been of no effect, the statute (34 Geo. III. c. 14), which required articles to be enrolled within six months, expressly declaring, that if they were not so enrolled, the service, under them, should commence from the date of the enrolment; in a case, therefore, where it was supposed that the original articles had been duly enrolled, but which turned out not to be the case, the Court refused to direct the enrolment, *nunc pro tunc*, of a counterpart, observing, that if they were, then, to order such enrolment, the service could commence only from that period (*g*). A similar application was also refused in *Ex parte Joy* (*h*). The object of any such application is not very apparent, (except so far as relates to a counterpart or copy,) seeing that, at that period, the Annual Indemnity Act authorized the enrolment, and gave full efficacy to the service from the date of the articles. The law is, however, now altered; the Courts having power to make an order, as to the commencement of the service, in any such cases. See *ante*, p. 97.

An application to enrol an assignment of articles *nunc pro tunc*, so as to admit of the service being reckoned from the date, was refused, in *Ex parte Cunningham* (*i*), for want of power in the Court, in this respect, over the instrument, which was executed before the 6 & 7 Vict. c. 73, that Act giving authority to make such an order only as to articles entered into subsequently thereto. The power having been extended to prior articles by the 7 & 8 Vict. c. 86, s. 2, and these articles having been enrolled previously to the

(*d*) 1 H. & W. 193.
(*e*) 1 Dow. N R 565.
(*f*) *Ibid.*
(*g*) *Ex parte Pilgrim*, 1 B. & C. 264.
(*h*) 3 Dow. 342
(*i*) 8 Jurist, 405.

passing of this latter Act, but subsequently to the former motion, application was, in Michaelmas Term, 1844 (*k*), granted, for reckoning the service from the time of the execution.

If an attorney be admitted without payment of the proper duty the Court will strike him off the Rolls.

Should a clerk, through any oversight of the officers, procure himself to be admitted an attorney, without having paid the proper amount of stamp duty on his articles, the Court will, on application in due time, order him to be struck off the Rolls.

In a case where an attorney of the Court of Common Pleas at Lancaster, who had been admitted in that Court, after service under articles stamped with 60*l.* duty, afterwards procured himself to be admitted in the Queen's Bench at Westminster, on payment of a further sum of 60*l.* only, instead of the full sum of 120*l.* required by law (*l*), the Commissioners of Stamps and Taxes, on his refusing to pay the additional duty of 60*l.*, applied to the Court to remove him from the Rolls, and an order was made, accordingly, to strike him off the Rolls, unless the sum of 60*l.* was paid by a given time. In this case it was stated that the attorney, before he was admitted, had been informed at the Stamp Office that 60*l.* was the proper sum to be paid, and his articles were stamped on payment of that amount; this information must, however, have been communicated under an erroneous impression that the case related, not to the Common Pleas at Lancaster, but to the abolished Court of Great Sessions in Wales, in reference to which 60*l.* (*m*), and not 120*l.*, would have been all that the law required to be paid (*n*).

(*k*) 9 Jurist, 109

(*l*) See 9 Geo. IV. c. 49, p 96, *ante*.

(*m*) See 1 Will IV. c. 70, s. 17, p. 96, *ante*.

(*n*) *Re Myres*, 8 A. & E. (N. S.) 515.

Attorneys and Solicitors, &c.

See "Articled Clerks."

5 W. & M. c. 21.	22 Geo. II. c. 46.
9 Will. III. c. 25.	23 Geo. II. c. 26.
12 Anne, stat. 2, c. 9.	23 Geo. III. c. 58.
2 Geo. II. c. 23.	

By the above Acts duties were granted on the admissions of attorneys and solicitors, and regulations enacted as to such admissions, all of which were repealed by the 44 Geo. III. c. 98, and 6 & 7 Vict. c. 73.

25 Geo. III. c. 80.

Annual certificates.

By this Act certain stamp duties were granted on annual certificates to be taken out by attorneys, &c., *viz.*; If any such person resided in London, Westminster, or Edinburgh, or within certain limits, 5*l.*; if beyond those limits, 3*l.*

Solicitors, &c. to deliver into Court duly stamped notes with their names, &c.

Sect. 3.—Every such person annually, during such time as he shall continue to practise, to deliver into one of the Courts in which he shall have been admitted, a note in his proper handwriting, containing his name and usual place of abode, and stamped with the proper stamp denoting the said duty, according to his residence; and, thereupon, to be entitled to have a certificate, in manner after directed.

Sect. 4.—Certain officers of the Courts to enter the name, &c., of every such attorney, or solicitor, in rolls or books kept for that purpose.

Certificates, to be issued and renewed.

Sect. 5.—The officers to issue such certificates; the same to bear date the day they are issued, and to continue in force for twelve months and be renewed annually so long as the parties practise, ten days before their expiration.

What persons to be deemed resident within the limits for the higher duties.

Sect. 6.—To prevent evasions of the higher duties by persons who may have divers places of residence, any of the several persons aforesaid, who shall reside within any of the said limits for the space of forty days, or more, in any one year, to be deemed to be resident within such limits, and be liable to the higher duties, for and during such time as he shall continue to be so resident for the space of forty days or more in each year, notwithstanding he may at other times reside without the limits.

Sect. 7.—Penalty for practising without a certificate, or for delivering in any false place of residence, with intent to evade the payment of the higher duties. See 37 Geo. III. c. 90, s. 30.

37 Geo. III. c. 90.

Charging a further duty on Admittances.

Certificates to be taken out at the Stamp Office only.

Sect. 26.—Reciting 25 Geo. III. c. 80, and that it was expedient that certificates should be taken out at the Stamp Office only.

Every person admitted a solicitor, attorney, notary, proctor, agent, or pro-

curator, in any of the Courts at Westminster, or any Ecclesiastical Court, or Court of Admiralty, or of the Cinque Ports, Great Sessions, Counties Palatine, or other Court in England, holding pleas of 40*s.*, annually, between the 1st Nov. and the end of Michaelmas Term, during such time as he shall continue to practise, or before he shall commence any proceedings, to deliver to the Commissioners of Stamps, or their officer, a note in writing, containing his name and residence, and, thereupon, and upon payment of the duty, to be entitled to a certificate, duly stamped to denote the payment of the duty, in such form as the Commissioners shall devise. The period altered by the 54 Geo. III. c. 144, s. 13.

Certificates to be entered.

Sect. 27.—Every such certificate to be entered in one of the Courts in which the party shall have been admitted. This section is repealed by the 6 & 7 Vict. c. 73.

Date and expiration of certificates.

Sect. 28.—Every certificate issued between the 1st Nov. and the end of Michaelmas Term to be dated on the 2nd Nov.; if issued at any other time, to bear date the day issued; and every certificate to cease on the 1st November then next following. The period altered by 54 Geo. III. c. 144, s. 13.

Practising without a certificate, penalty 50*l.*

Sect. 30 —If any person, in his own name, or that of any other person, sue out any writ or process, or commence, prosecute, carry on, or defend, any action, suit, or proceeding, in any of the Courts aforesaid, for or in expectation of gain, fee, or reward; or do any act in any of the said Courts as an attorney, &c., without obtaining a certificate as aforesaid, or entering the same as aforesaid; or deliver in any account containing a place of residence, as the place of his residence, contrary to the said Act of the 25 Geo. III. with intent to evade the higher duty; to forfeit, for every offence, 50*l.*, and be incapable of maintaining any action or suit, for any fees, reward, or disbursement on account of prosecuting, carrying on, or defending any action, suit, or proceeding, &c., without such certificate.

Persons omitting to take out their certificates for a year to be off the Roll.

Sect. 31.—Every person admitted in any of the said Courts, who shall neglect to obtain his certificate, in manner before directed, for the space of one whole year, to be thenceforth incapable of practising; and his admission to be null and void. Not to prevent the Court from re-admitting such person, on payment of the duty accrued since the expiration of his last certificate, and such further sum, by way of penalty, as the Court shall think fit. This section is repealed by 6 & 7 Vict. c. 73.

39 & 40 Geo. III. c. 72.

The said Acts to extend to notaries.

Sect. 7.—Reciting that doubts had existed whether the Acts of the 25 & 37 Geo. III. extended to notaries, they not being admitted in any of the said Courts.

Every person who shall act as a public notary, or use or exercise the office of a notary, in any manner, or do any notarial act whatever, without having been duly admitted in the Court or Courts in which notaries are usually admitted, and without having taken out a certificate, as directed by the said Acts, to forfeit 50*l.*, and be incapable to do any act as a notary, or recover any fee for any act done.

44 Geo. III. c. 59.

Sect. 3.—The time for entering certificates extended.

44 Geo. III. c. 98.

By this Act all stamp duties were repealed, and others granted in lieu; and, amongst them, duties on the admittance of attorneys, &c., and on annual certificates of attorneys, &c., and of special pleaders, draftsmen in equity, and conveyancers; the powers, provisions, &c., of former Acts being kept in force.

Who shall draw conveyances.

Sect. 14.—Every person, who, for or in expectation of fee, gain, or reward, shall draw or prepare any conveyance of, or deed relating to any real or personal estate, or any proceedings in law or equity, other than and except

Serjeants at Law, Barristers.
Solicitors,
Attorneys,
Notaries,
Proctors,
Agents, or
Procurators,
having obtained regular certificates;

Special Pleaders,
Draftsmen in Equity, and
Conveyancers,
being members of one of the four Inns of Court, and having taken out certificates;

Persons employed solely to engross any deed, instrument, or other proceedings, not drawn by themselves; and

Public officers, preparing official documents in the course of their duty,

shall forfeit 50*l*. Provided that nothing herein shall extend to prevent any person from preparing any will, agreement not under seal, or letter of attorney.

48 Geo. III. c. 149.

The duties granted by the last Act repealed, and new ones of the same description granted in lieu; the provisions of former Acts to be applied to the new duties.

54 Geo. III. c. 144.

Certificates to be taken out between 15th Nov. and 16th Dec.

Sect. 13.—All attorneys, &c., and others who, by the laws in force, would be bound to take out stamped certificates between the 1st day of November and the end of Michaelmas Term, shall, in future, take out the same between the 15th November and the 16th December, in each year; and, in default, be liable to the same forfeitures, &c., as for not taking them out within the first-mentioned period.

Date and expiration of certificates.

Sect. 14.—Certificates taken out between the 15th Nov. and the 16th Dec. to be dated on the 16th Dec.; and if taken out at any other time to be dated on the day they are granted; all certificates to continue in force until the 15th Nov. following.

See 9 Geo. IV. c. 49, s. 11, as to CERTIFICATES OF CONVEYANCERS, &c.

55 Geo. III. c. 184.

Duties.

The duties granted by the 48 Geo. III. repealed, and others granted in lieu; for which see TABLE, "ADMISSION," "CERTIFICATE."

Provisions of former Acts to continue in force.

Sect. 8.—All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains and penalties, contained in any Act relating to any former duties, to be of full force, and be applied in relation to the duties by this Act granted.

9 Geo. IV. c. 25.

Solicitors of revenue boards.

Sect. 1.—Persons appointed solicitors or attorneys on behalf of His Majesty, by the Commissioners of the Treasury, Customs, Excise, or Stamps, or other branch of revenue, may act as such in every Court, jurisdiction, and place, in any part of the United Kingdom, any thing in any Act, order, or rule, or any law, usage, or custom relating to solicitors or attorneys to the contrary notwithstanding.

9 Geo. IV. c. 49.

Sect. 6.—Writers to the signet, solicitors, agents, attorneys, procurators, or notaries, between the 31st Oct. and 1st Dec. in every year, to deliver at the Stamp Office at Edinburgh, or to the Distributor of Stamps, a note, containing his full name, and designation or description, together with his usual place of residence, or the place where his business is carried on, which is to be deemed to be his residence, and to be so described; and stating whether his admission was within or beyond three years; and upon payment of the duty to be entitled to a certificate.

Writers, &c., in Scotland to obtain annual certificates.

Sect. 7.—Every such certificate to be entered by an officer appointed by the Judges of Session, by the clerk of the sheriffdom, or stewartry.

Same to be entered.

Sect. 8.—Every such certificate issued between the 31st Oct. and the 1st Dec. in any year, to bear date on the 1st Nov.; every other certificate to bear date the day it is issued; and every such certificate to cease and determine on the 31st Oct. then next.

Date and termination of certificates.

Sect. 9.—If any person, (not entitled to special exemption,) for or in expectation of gain, fee, or reward, directly or indirectly, by himself or another, or in his own or another's name, sue out any writ, or defend any action, &c., or do any act whatever in any Court in Scotland as a solicitor, &c., or as a public notary, without having first duly obtained, or entered, a proper stamped certificate; or, if he deliver to the proper officer of stamps, any paper or note misrepresenting the place of his residence, with intent to evade the payment of any duty, to forfeit 50*l.* and be incapable of recovering his fees.

Practising without a certificate, &c., 50*l.*

Sect. 10.—The penalties may be recovered in the Court of Exchequer at Edinburgh as other penalties relating to stamp duties.

Sect. 11.—Certificates to conveyancers, special pleaders, and draftsmen in equity in England, granted between the 31st Oct. and the 1st Dec., to be dated on the 1st Nov. in every year; and those granted at any other time to be dated on the days they are actually granted; and every such certificate to have effect until the 31st Oct. then next following.

Conveyancers in England; date and expiration of certificates.

1 Will. IV. c. 70.

Abolishing the Courts of Chester and Great Sessions in Wales.

As to the admissions of attorneys of these Courts in the superior Courts, see "ARTICLED CLERKS."

6 & 7 Vict. c. 73.

For consolidating and amending several of the laws relating to Attorneys and Solicitors practising in England and Wales.

Sect. 1.—Repeals, (amongst other Acts, and parts of Acts, specified in the schedule thereto,) sect. 27 of the 37 Geo. III. c. 90, which requires certificates to be entered in the Courts, and sect. 31, which makes the admission of an attorney, who omits for a whole year to take out his certificate, void.

37 Geo. III. c. 90, ss. 27 and 31, repealed.

Sect. 2.—No person to act as an attorney or solicitor in any Court of law or equity in England or Wales, or in any matter, civil or criminal, at the assizes or sessions, or before any Justice or Commissioners of Revenue, unless he be admitted and enrolled and otherwise duly qualified, and *continue to be so duly qualified and on the Roll* at the time of his acting.

No person to act as an attorney or solicitor unless admitted and enrolled.

And where application is made immediately.

where the attorney had, by the neglect to renew his certificate, been off the Roll only two days, and had made application to be re-admitted on the day following (*e*).

Refused where known to him and he continued to practise.

But, where an attorney, who had omitted to take out his certificate from pecuniary difficulties, applied to be re-admitted, without swearing that he had not practised, the Court refused to dispense with the notice; observing, that the only case, where the party had continued to practise, in which the rule had been waived, was, where he had reason to suppose that his agent, or some other person, had taken out his certificate for him (*f*).

And so, it was refused by Mr. Justice *Bayley*, where the attorney had been abroad during the year he was without his certificate, and must, therefore, have known that he had none (*g*); and again, by Mr. Justice *Coleridge*, where the party applied at the Stamp Office a few days too late for his certificate, making his application to be re-admitted in Hilary Term following (*h*).

Notice to the Stamp Office.

In all cases notice must be given to the Stamp Office (*i*); although, of course, this will be dispensed with where the Stamp Office consents (*k*).

Terms on which re-admission allowed.

The terms on which re-admission has been allowed are various. The condition under which the Courts were to be at liberty, by the proviso contained in the 37 Geo. III. c. 90, s. 31, to re-admit an attorney, was the payment of the duty accrued due since the expiration of the party's last certificate, and such further sum, by way of penalty, as the Court should think fit.

Without payment of duty where party has not practised.

The interpretation put upon this clause by the Courts was, that they were not compelled to require the payment of the duty since the last certificate, in cases where the party had not actually practised (*l*).

In *Ex parte Davis* (*m*), the Court, in making the order allowing

(*e*) The Court has dispensed with notice of the application for the renewal of a certificate under the 6 & 7 Vict. c. 73, s. 25, in a case where the circumstances were similar to those first above referred to. See *Ex parte Gude*, 1 Dowl. & L. 675.

(*f*) *Ex parte Bartlett*, 1 Chitty, 207.

(*g*) *Ex parte Watson*, 1 Chitty, 208.

(*h*) *Ex parte Smithers*, W. W. & H. 33.

(*i*) *Ex parte Franks*, 3 Dow. 199; *Ex parte Bridgman*, 3 Dow. 371; *Ex parte Thorpe*, 3 Dow. 592.

(*k*) *Ex parte Nuttall*, 3 A. & E. 188.

(*l*) *Ex parte Clarke*, 2 B. & Ald. 314; *Ex parte Calland*, *ib.* note; *Ex parte Matson*, 2 D. & R. 239; *Ex parte Richards*, 1 Chitty, 101; *Ex parte Thompson*, 2 Dowl. 160; *Ex parte Philcox*, *ib.* 450; *Ex parte Thompson*, 5 Dowl. 275; *Ex parte Brabant*, 7 Dowl. 622; *Ex parte Knipe*, 9 Dowl. 188; *Ex parte Murray*, 1 Tur. & Russ. 56.

(*m*) 1 Chitty, 729.

the party to be re-admitted without fine, as well as arrears, on his swearing that he had not practised, observed, that they did not require any fine to be paid where there were no arrears, although it was remarked, by counsel, that it was otherwise in the Court of Common Pleas. But see *Ex parte Cunningham* (*n*), from which it would seem that no difference existed in the opinion of that Court upon the point, although the officers considered the practice to be otherwise; in that case the Prothonotary refused to re-admit an attorney, under a rule obtained for that purpose, without payment of arrears; but the Court ordered the re-admission without any such payment, it appearing that the party had not practised since the expiration of his last certificate.

Arrears to be paid where affidavit not made that the party has not practised.

Unless the attorney, however, positively swear that he has not practised, the arrears of duty are required (*o*).

In *Ex parte Wybrow* (*p*), Mr. Justice *Patteson* observed, that an attorney ought to take out his certificate every year between the 15 Nov. and 16 Dec.; that if he neglected to do so, although he would not be off the Roll until the 15 Nov. following, yet, his obtaining his certificate before the latter period, would not prevent him from being subject to the liabilities attached to practising without a certificate.

Where the party was employed as clerk, nominal fine and duty.

In *Ex parte Sherwood* (*q*) the party had ceased to practise during two years (1814 and 1815); for which period he had been employed as a managing clerk, and had not taken out his certificate; the Court ordered his re-admission (in 1823) on payment of a nominal fine, and the duty for those two years.

Nominal fine, only, where party ceased to practise from illness.

On the same day the Court allowed an attorney to be re-admitted, on payment of a nominal fine only, who had, for the previous year (1822), omitted to take out his certificate, he having, during that period, retired from London for the benefit of his health, and ceased to practise (*r*).

Where the party had practised in an inferior Court in the interval.

An attorney had ceased, for a time, to take out his certificate, and, afterwards, applied to be re-admitted, stating that he had, in the interval, practised in the Court of the Hundred of High Peak for the recovery of debts under 5*l.*; the Court refused to admit him without paying the arrears of duty (*s*).

But the circumstance of practising in an inferior Court, where persons, who are not attorneys, are allowed to practise, did not, in

(*n*) 7 Moore, 412; 1 Bing. 91.
(*o*) *Anonymous*, 1 Chitty, 646; *Ex parte Lowerton*, 1 Hodges, 77.
(*p*) 9 Dow. 197.
(*q*) 7 Moore, 493.
(*r*) *Ex parte Malphant*, 1 Moore, 495.
(*s*) *Ex parte Binns*, 4 A. & E. 1005.

another case, deprive a party of the privilege of being re-admitted without payment of arrears (*t*).

On payment of fine and duty where certificate not taken out by agent's neglect.

In some instances of omission the Courts have imposed more than a nominal fine, as well as required the payment of the duties.

Where the agent of an attorney neglected to take out his client's certificate, and the attorney, as soon as he knew of it, made an application to be re-admitted without paying any fine, the Court said they had many applications of the kind, and they thought it expedient, for the good of the profession, that attorneys should take care to ascertain whether their certificates had been taken out, and have them sent down to them; and that, therefore, in order to establish this as a rule, they would not re-admit, in any case, without a fine; but, that, in the present instance, they would only impose a small fine, for the purpose of marking the rule; and they ordered the re-admission on payment of the arrears of duty and 5*l.* (*u*).

A similar fine was imposed in *Ex parte Stonecroft* (*v*), where the certificate had been omitted for a year, and the party did not state whether or not he had practised, and it being, therefore, assumed that he had. In *Ex parte Rigby* (*w*), where a clerk had omitted to take out the certificate, the fine was limited to 40*s.* In *Ex parte Thorpe* (*x*), and *Ex parte Jones* (*y*), 20*s.* only was required. In the latter case the agent had, altogether, omitted to take out the certificate for the last year, and had taken it out on the lower rate of duty by mistake, for previous years. The same sum was, likewise, required in *Ex parte Lewis* (*z*), where, for two years, the attorney had given his clerk 12*l.* to take out his certificate, but who had taken it out on 6*l.* duty only. In this case, Mr. Justice *Littledale* observed, that it was, partly, the fault of the attorney that the omission was not discovered; and he required the consent of the Attorney-General to be obtained, and an affidavit of the party that he did not expect any application to be made against him. In *Ex parte Legh* (*a*) a fine of 6*s.* 8*d.* only, besides the arrears, was directed to be paid, where the clerk had neglected to take out the certificate; and in *Ex parte King* (*b*) a nominal fine also was imposed, where, owing to a mistake arising from illness, the certificate was forgotten.

(*t*) *Ex parte Thompson*, 5 Dow. 275; 2 H. & W. 327.
(*u*) *Ex parte Leacroft*, 4 B. & Ald. 90.
(*v*) 1 H. & W. 368.
(*w*) 1 N. & M. 593.
(*x*) 3 Dow. 592.
(*y*) 2 Dow. 199.
(*z*) 4 W. W. & H. 405.
(*a*) Page 105, *ante*.
(*b*) W. W. & H. 87.

Where by party's own neglect.

In *Ex parte Miller* (c), the applicant stated, by affidavit, that he had accidentally delayed his application for the renewal of his certificate three days beyond the proper time: but he did not state whether he had, or had not practised, during these three days; his counsel, however, admitted that he had. Mr. Justice *Patteson* directed him to be admitted, on payment of the arrears of duty, and a nominal fine; observing, that he ought to have stated, broadly, in his affidavit, that he did practise when he was, in fact, off the Roll; it ought not to be brought before the Court merely by the admission of counsel. In this case it does not appear to have occurred to the learned Judge, that the attorney had been practising, (as no doubt he had,) during a whole twelvemonth, without his certificate; and that he had no intention of taking out his certificate, except just to prevent his being off the Roll, but that he happened to overstep the period by three days. This was not the case of any attorney practising, for a twelvemonth or more, without knowing that his certificate had not been taken out, where he had been deceived by his agent, or his clerk: in which cases, even, the Court have, sometimes, required a fine to be paid, as well as arrears.

In a prior case (*d*), where the party was, under similar circumstances, one day too late, to prevent his being off the Roll, and he applied on the following day to be re-admitted, on an affidavit stating that he had practised, Mr. Justice *Littledale* allowed such re-admission on payment of 20*s*. and arrears, and without giving the usual notice. And in *Ex parte Philpot* (*e*), a fine of 40*s*. was imposed, where the party had from poverty, omitted for one year to take out his certificate, admitting that, in two instances, he had practised during the interval.

Where an attorney has ceased to practise for many years.

If any considerable period has elapsed since the party ceased to take out his certificate, he will not be allowed to be re-admitted, if he be off the Roll, nor, it is presumed, to renew his certificate under the present Act, without undergoing the usual examination. Where an attorney had been admitted thirty-nine years since, but had not practised, and had acted as a Magistrate, and Commissioner of Taxes, the Court refused to permit him to be re-admitted without the usual notices for examination (*f*).

(c) 8 Dowl. 323.

(*d*) *Ex parte Minchin*, page 105, *ante*.

(*e*) 3 Dow. 339.

(*f*) *Ex parte Robinson*, 8 Jurist, 621; *Ex parte Billings*, 5 Dow. 395; 2 H. & W. 327; *Ex parte Rudge*, 2 Dow. N. R. 682; *Ex parte Brabant*, 7 Dow 622; *Ex parte Bray*, 13 L. J. R. (N. S) Q B. 240; *Ex parte Mayer*, 5 Moore, 141.

Where the penalties are remitted by the Commissioners of Stamps.

In a case where an attorney had been practising for three years without a certificate, and had been prosecuted by the Commissioners of Stamps, who had remitted the penalties, Mr. Justice *Littledale* observed, that the penalties being remitted, the attorney was in the situation of a person who had never practised, and might be re-admitted accordingly (*g*).

Whether attorneys, who never took out certificates or practised must be re-admitted.

It has not been distinctly settled, whether the 30th sect. of the 37 Geo. III. c. 90 applied to the case of an attorney who, after his admission, never commenced practising, and never took out his certificate. In *Ex parte Nicholas* (*h*), Sir *Vicary Gibbs*, C. J., observed, that the fear was, that the admission might be void. In *Ex parte Jones* (*i*) Mr. Justice *Parke*, in *Hilleary* v. *Hungate* (*k*) Mr. Justice *Littledale*, and in *Ex parte Marshall* (*l*) Mr. Justice *Williams*, thought otherwise.

In *Ex parte Adey* (*m*) an order was made by the Lord Chancellor (*Eldon*) for re-admission, on the party's application for that purpose, but nothing appears, by the note of the case, to have been said as to the necessity for it, although it has been stated that his Lordship expressed his opinion that re-admission was proper in such case, if not necessary.

Opinion of Lord *Eldon* when Attorney-General.

It may not, however, be considered out of place here, to allude to an opinion given by the last-mentioned learned Judge, when Attorney-General, in 1798.

It appears, that, soon after the passing of the Act, it became necessary to consider the point now under discussion; and the Commissioners of Stamps consulted the Attorney-General (Sir *John Scott*) upon it, whose opinion is still preserved. After referring to section 26 of the Act (37 Geo. III. c. 90), and stating the different cases of persons embraced thereby, the opinion proceeds thus:—"A person cannot be said to continue to practise who has never begun to practise; and it seems to me, that the following are cases in which the legislature did not mean to impose the burthen of taking out the certificate, *viz.*, the case in which a person admitted, and having been a practising attorney before the 1st Nov. 1797, remains afterwards an admitted attorney, but does not continue to practise; and the case in which a person admitted an attorney on or after the 1st Nov. 1797, never begins to practise. It seems to me that the legislature did not mean that the former, quitting practice, should pay the annual duty; and the latter, never

(*g*) *Ex parte Tufkin*, 1 H. & W. 516.
(*h*) 2 Marsh. 123; 6 Taunt. 408.
(*i*) 2 Dowl. 451.
(*k*) 3 Dowl. 61.
(*l*) W. W. & H 405.
(*m*) 1 Turn. & Russ. 57, note.

commencing practice, seems to be in a situation, which, upon principles of reason, ought equally to exempt him. I, therefore, think that a person admitted, who has never practised, is not obliged to take out a certificate within twelve months from Nov. 1797, and that his admission will not be void if he does not, but that he must take out a certificate before he brings any action, and must then continue, so long time as he shall thereafter continue to practise, to take out a certificate annually; and it seems to me that he will then, in the words of the section last stated, '*obtain his certificate in the manner in the Act mentioned.*'"

Although an attorney who omits for a year to take out his Stamp Office certificate is not now off the Roll, yet if he neglects to obtain it within the time "by law appointed," that is, it is presumed, within the year, he cannot, as before observed, procure the Registrar's certificate, (which is now necessary to authorize the granting of his Stamp Office certificate,) without an order of the Court or a Judge. But if he be off the Roll under the 37 Geo. III. c. 90, by reason of his having omitted to obtain his certificate previously to the 6 & 7 Vict. c. 73, he must be re-admitted in the usual manner; an order to the Registrar to grant a certificate under the latter Act is not sufficient.

An attorney off the Roll under 37 Geo. III. c. 90, must still be re-admitted.

The same notices of an intention to apply for an order that a certificate may be granted, are required, as of an application for re-admission, under the old law (*n*).

Notice of application for a certificate.

In *Welch* v. *Pribble* (*o*) a motion to stay proceedings on the ground that one of the attorneys (partners) for the plaintiff had not taken out his certificate was refused; *Bayley*, J., observing that the attorney was liable to a penalty, but that the client was not to suffer for the misconduct of his attorney. And in *Hilleary* v. *Hungate* (*p*), Mr. Justice *Littledale* refused to set aside a judgment for irregularity on the same ground.

The plaintiff's attorney not having obtained his certificate no ground for staying proceedings.

On the question, how far costs are payable, where the person conducting the proceedings for either party is not duly qualified so to do, see *Reader* v. *Bloom* (*q*), *Young* v. *Dowlman* (*r*), *Hyde* v. *Latham* (*s*), *Meeking* v. *Whalley* (*t*), *Humphrey* v. *Harvey* (*u*), *Patterson* v. *Powell* (*x*), ——— v. *Sexton* (*y*), and *Nash* v. *Goode* (*z*).

As to costs of proceedings by persons not attorneys.

(*n*) *Ex parte Daniel*, 8 Jurist, 20.
(*o*) 1 D. & R. 215.
(*p*) *Ante*, p. 110.
(*q*) 3 Bing. 9.
(*r*) 3 Y. & J. 24.
(*s*) 3 Tyr. 143.
(*t*) 1 Bing. N. C. 59.
(*u*) 1 Bing. N. C. 62; 2 Dow. 827.
(*x*) 3 Moore & S. 195.
(*y*) 1 Dow. 180.
(*z*) 9 Dow. 929.

Whether an attorney may maintain an action for business done whilst without a certificate if it be renewed within the year.

The question as to the right to recover the amount of a bill of costs for business done, as an attorney, between the expiration of one certificate and the time of obtaining another, was involved in the case of *Bowler* v. *Brown* (*a*), but the peculiar position assumed by the Court in this case, quite, as it would appear, beside the views taken by the parties, entirely excluded the consideration of it. The point, however, has since been disposed of by a legislative enactment (*b*); and no mention would, therefore, be here made of the case but for the purpose of alluding to the construction put upon the 30th sect. of the 37 Geo. III. c. 90, by the Lord Chief Justice, and recording, (which is done with the most profound respect and deference,) the writer's dissent therefrom. In the view taken by his Lordship the words, "with intent to evade the higher duty," are to be read as referring to practising, generally, without a certificate, as well as to giving in a false account for the purpose of evading such higher duty. This is, in fact, to make the clause, so to speak, nonsense; and is, palpably, contrary to the intention of the legislature, and not consistent, it is apprehended, with the rules for construing (even *modern*) Acts of Parliament. The opinion seems to have been delivered without deliberation, nor was any argument of counsel addressed to the point; and there can be no doubt, that should a case arise in which a judgment upon the same point is required, such opinion would not be treated as authority. Indeed, it may be said that one step has, already, been made towards overruling the decision, by the observation of Mr. Baron *Parke* in the case of *Eyre* v. *Shelley* (*c*), (relating to the non-entry of a certificate, now altogether unnecessary to advert to); in which his Lordship said, alluding to *Bowler* v. *Brown*, "I cannot help thinking the decision very doubtful." And, in reference to the real question left undetermined in *Bowler* v. *Brown*, it may, also, be said to have been, in effect, decided in *Eyre* v. *Shelley*; although, in giving judgment, Mr. Baron *Parke* stated that the Court gave no opinion as to the authority of the former case. In referring to the interval allowed for renewing the certificate, and during which, if the certificate be taken out, it will be dated so as to cover the whole period since the expiration of the last certificate, his Lordship observed, that "in this interval business may be done, and the certificate antedated so as to render it legal; but it seems that unless there be a certificate obtained before, or so antedated, the

(*a*) 4 A. & E. 116; 4 N. & M. 17. page 104.
(*b*) 6 & 7 Vict. c. 23, s. 26, *ante*, (*c*) 6 M & W. 269.

action could not be maintained, in respect, even, of business done in that interval."

The penalty for practising without a certificate attaches to each party severally, and not to a firm of partners jointly; and, therefore, in a *qui tam* action against two persons, partners, for a penalty of 50*l.* for acting as proctors without having obtained and entered their certificate or certificates, judgment was given for the defendants (*d*).

The penalty for practising without a certificate applies to each person of a firm.

An attorney who omitted to take out his certificate on the expiration of a former one, but who renewed it in the course of the year, did not lose his privilege of freedom from arrest in the interval (*e*).

Privilege not lost if certificate renewed.

In an action of libel by an attorney, proof of the plaintiff's practising, and of his having taken out his certificate, was considered evidence of his being an attorney (*f*).

Evidence of being an attorney.

By the 55 Geo. III. c. 184 annual certificates are required to be taken out, not only by attorneys and solicitors, &c., but also by members of any of the Inns of Court, who, in the character of conveyancer, special pleader, draftsman in equity or otherwise, shall, for or in expectation of fee, gain, or reward, draw or prepare any conveyance of, or deed or instrument relating to any estate or property, real or personal, or any other deed or contract whatever, or any pleadings or proceedings in any Court of law or equity. The penalty for doing any such act by persons not qualified, or by qualified persons not having certificates, is imposed by the 44 Geo. III. c. 98, s. 14, which does not extend to an agreement under hand only, but expressly excepts such documents; there is, therefore, no prohibition against any person preparing, for gain, an agreement under hand only, although he may have no certificate, nor possess the legal qualification requisite for preparing deeds. The case of *Edgar* v. *Hunter* (*g*) was an action, by a medical agent, for work and labour in preparing an agreement for the purchase of a medical business; and *Gibbs*, C. J., without adverting to the exception, although relied upon by counsel, held that the plaintiff was not a person described in the 55 Geo. III. c. 184, as requiring a certificate, not being a member of one of the Inns of Court. His Lordship was, also, inclined to think, that the agreement would not be invalid, though the plaintiff might subject himself to a penalty. This last observation was, it is presumed, meant

Conveyancers, &c.

Agreements may be prepared by persons without certificates.

(*d*) *Barnard* v. *Gostling and another*, 1 N. R. 245.

(*e*) *Skirrow* v. *Tagg*, 5 M. & S. 281; *Prior* v. *Moore*, 2 M. & S. 605.

(*f*) *Sparling* v. *Haddon*, 2 Moore & S. 14.

(*g*) Holt, 528.

to convey an opinion, that, although an instrument might be prepared under such circumstances as to render the party liable to a penalty, yet that such person might recover his charges for preparing it, there being no provision to the contrary, as in the case of attorneys and solicitors practising in the Courts without certificates.

Ireland.

See 56 Geo. III. c. 56, ss. 59, 62 *et seq.*, and 5 & 6 Vict. c. 82, s. 16, in the Appendix.

Awards. See "APPRAISEMENTS."

Bankers. See "BILLS AND NOTES."

Bills of Exchange and Promissory Notes.

Bankers.

22 Geo. III. c. 33.
23 Geo. III. c. 49.
24 Geo. III. c. 7.

These Acts imposed stamp duties on bills and notes, or otherwise related thereto.

31 Geo. III. c. 25.

The duties, powers, and penalties contained in the above Acts were, by this Act, repealed; and other duties on Bills and Notes granted.

Sect. 6.—If any bill or note be not duly stamped, the duty to be payable by all the persons, respectively, drawing, uttering, or negotiating the same.

Paper not to be stamped after.

Sect. 19.—The paper to be stamped before any bill or note is written thereon. No bill or note to be pleaded, or given in evidence in any Court, or admitted in any Court to be good, useful, or available, in law or equity, unless stamped to denote the duty thereon, or some higher rate of duty. The Commissioners of Stamps, or their officers, not to be allowed to stamp any paper after any bill, note, draft, or order, has been written thereon, under any pretence whatever.

No bill or note to be good unless stamped.

37 Geo. III. c. 90.

Granting additional duties on bills and notes.

37 Geo. III. c. 136.

Bills and notes in certain cases.

Sect. 5.—A bill or note stamped with a stamp of an improper denomination, but of sufficient amount, may be stamped on payment of the duty, and a penalty as after mentioned; for which duty and penalty a receipt is to be written on the back.

Penalty on stamping.

Sect. 6.—If such bill or note be not payable according to the tenor, the same may be stamped on payment of the duty, and a penalty of forty shillings; if it be payable according to the tenor, then, on payment of the duty, and a penalty of 10*l.*

39 Geo. III. c. 107.

Granting further duties on bills and notes, and providing for

the re-issuing of notes payable to bearer on demand, with restrictions.

Scotland. Notes under 5*l.*

Sect. 11.—No bill of exchange, promissory note, bill, ticket, or other note in the nature of bank notes, after the 1st December, 1799, to be issued or negotiated in Scotland for any sum under 5*l.*, other than for 5*s.* [until the end of the session after the 1st December, 1800], and 1*l.*, and 1*l.* 1*s.*, under a penalty of 10*l.* See 48 Geo. III. c. 98, s. 16, and 8 & 9 Vict. c. 38, s. 5.

Certain banks may issue unstamped notes for 1*l.* and 1*l.* 1*s.*

Sect. 19.—The Bank of Scotland, and Royal Bank of Scotland may issue notes payable to bearer on demand for 1*l.* and 1*l.* 1*s.* without being stamped, on giving security, by bond, for keeping accounts of all unstamped notes, bills, and tickets for those amounts, and exhibiting an account of the duties in the Exchequer, and paying the same.

39 & 40 Geo. III. c. 28.

Bank restriction. No company exceeding six to issue certain bills or notes.

No body politic or corporate, nor any other persons in partnership, exceeding six, in England, to borrow, owe, or take up, any sum or sums of money on their bills, or notes, payable on demand, or at any less time than six months, during the continuance of the privileges thereby granted to the Bank of England. See 7 Geo. IV. c. 46.

41 Geo. III. c. 10.
44 Geo. III. c. 98.

Granting duties; the latter Act repealing all existing duties.

48 Geo. III. c. 149.

Repealing all duties on bills and notes and granting others in lieu.

Certain banks in Scotland may issue unstamped notes.

Sect. 16.—The Bank of Scotland and Royal Bank of Scotland and the British Linen Company may issue, on unstamped paper, notes for 1*l.*, 1*l.* 1*s.*, 2*l.*, and 2*l.* 2*s.*, on giving security for the duties, and paying 20*l.* per annum in lieu of a licence.

Licence.

Sect. 17.—No banker or other person (except the Bank of England and the last-mentioned Banks in Scotland) to issue notes payable to bearer on demand, without a licence as provided by this Act. See 55 Geo. III. c. 184.

The exception in favour of Scotch banks limited.

Sect. 19.—The exception in favour of the said Banks in Scotland to extend to exempt them from licences, only in respect of their several present establishments, or branches [as specified], but if they set up any other, or employ an agent for issuing notes at any other town or place, they are to take out a licence for such town or place as other bankers.

Sect. 21.—As to unstamped notes made out of Great Britain. See 55 Geo. III. c. 184, s. 29, in lieu.

53 Geo. III. c. 108.

This relates to the allowance of spoiled stamps for bills and notes, for which see "Spoiled Stamps."

55 Geo. III. c. 184.

The duties granted by 48 Geo. III. c. 149 repealed and others granted in lieu. See TABLE.

Sect. 8.—The provisions of former Acts, not expressly altered by this Act, to continue in force in respect of the new duties.

Making an unstamped bill or note, penalty 50*l.*

Sect. 11.—If any person make, sign, or issue, or cause to be made, signed, or issued, or accept or pay, or cause or permit to be accepted or paid, any bill of exchange, draft, or order, or promissory note for the payment of money, liable to any of the duties imposed by this Act, without the same being stamped for denoting the duty hereby charged thereon, to forfeit for every such bill, &c., 50*l.*

Penalty for post-dating bill or note, to evade the duty, 100*l.*

Sect. 12.—If any person make and issue, or cause to be made and issued, any bill of exchange, draft, or order, or promissory note, for the payment of money at any time after date, or sight, bearing date subsequent to the day it is issued, so that it shall not, in fact, become payable in two months, if payable after date, or in 60 days, if after sight, unless the same be stamped for denoting the duty imposed on a bill or note payable at any time exceeding two months after date, or 60 days after sight—to forfeit, for every such bill, &c., 100*l.*

Checks. Post-dating or not specifying place of issuing, &c. Penalties.

Sect. 13.—Any person making or issuing, or causing to be made or issued, any bill, draft or order, payable to bearer on demand, upon any banker, or person acting as a banker, dated subsequently to the day it is issued; or not truly specifying the place where it is issued; or not falling, in every respect, within the exemption in favour of drafts on bankers, unless it be duly stamped as a bill—to forfeit 100*l.*; and any person knowingly receiving the same in payment, or as a security, to forfeit 20*l.*; and any banker, upon whom it is drawn, paying the same, knowing it to be post-dated—to forfeit 100*l.*, and not to be allowed the same in account.

Bankers' notes re-issuable.

Sect. 14.—Notes to bearer on demand not exceeding 100*l.*, if duly stamped, may be re-issued by the makers as often as thought fit.

Notwithstanding in the partnership, &c.

Sect. 15.—No further duty to be payable on such notes although re-issued by, and as the notes of some only of the original makers, or of one or more, and any others, in partnership; nor although such notes, if payable at any other than the place where drawn, shall be re-issued with any alteration therein only of the place at which they were first made payable.

Printed dates.

Sect. 18.—No note payable to the bearer on demand to be issued with a printed date therein, under a penalty of 50*l.*

Notes, &c., not allowed to be re-issued to be cancelled on payment.

Penalty for not cancelling or for re-issuing, 50*l.*; for taking same, 20*l.*

Sect. 19.—All notes, bills, drafts or orders, not hereby allowed to be re-issued, upon payment thereof to be deemed and taken to be wholly discharged, vacated, and satisfied, and be no longer negotiable or available in any manner whatsoever, but be forthwith cancelled by the person paying the same; and if any person re-issue, or cause or permit to be re-issued any such bill, note, draft or order after payment thereof; or, if any person paying or causing to be paid any such note, &c., refuse or neglect to cancel the same, to forfeit 50*l.*; and in case any such note, &c., be re-issued contrary to the intent and meaning of this Act, the person issuing the same to be accountable for the further duty thereon; and any person receiving the same in payment or as a security knowing it to be re-issued, to forfeit 20*l.*

Bank notes exempt.

Sect. 20.—All promissory notes, and bank post bills issued by the Bank of England to be exempt from duty; and may be re-issued as often as thought fit.

Bank to pay a composition in lieu.

Sect. 21.—The Bank of England to deliver to the Commissioners of Stamps on the 1st May, yearly, an account of their notes and bank post bills in circulation, on a given day in every week, for three years preceding the 6th April in that year, together with an average amount thereof, and pay a yearly composition of 3,500*l.* for every million, and the same rate for half a million.

Sect. 22.—When the Bank resumes cash payments a new arrangement for composition to be submitted to Parliament.

Scotch banks may issue unstamped notes.

Sect. 23.—The Bank of Scotland, Royal Bank of Scotland, and the British Linen Company to be at liberty to issue their notes for 1*l.*, 1*l.* 1*s.*, 2*l.*, and 2*l.* 2*s.* on unstamped paper, as under the 48 Geo. III., giving security and paying the duties as before. See 8 & 9 Vict. c. 38, s. 5.

Notes to bearer on demand not to be issued without licence.

Sect. 24.—No banker, or other person (except the Bank of England), to issue any promissory note payable to bearer on demand, hereby charged with duty and allowed to be re-issued, without taking out a licence, yearly, for that purpose; such licence to be granted by two or more of the Commissioners of Stamps, on payment of the duty. [See TABLE] A separate licence to be taken out for every town or place where such notes are issued. The licence to specify—

Particulars to be specified in licence.

The name and place of abode of every person, or the proper name and description of the body corporate, to whom it is granted.

The name of the town or place where the notes are to be issued.

The name of the bank, as well as the partnership or other name, style, or firm under which notes are to be issued.

And, where granted to persons in partnership—the names, and places of abode of all the partners, whether the names of all appear on the notes, or not.

Date of licence.

In default every such licence to be void. Licences granted between the 10th October and 11th November to be dated the 11th October; if granted at any other time, to be dated on the day on which granted; all such licences to continue in force until the 10th October following, inclusive.

In Scotland four licences sufficient.

Sect. 25.—Provided: in Scotland four licences for any number of towns to be sufficient; and, after taking out three licences for three places, any other places may be included in a fourth licence.

One for several towns in England.

Sect. 26.—In England, where parties would, under the 48 Geo. III., have been entitled to have two or more places included in one licence, they are to be entitled to the same privilege under this Act. See 7 & 8 Vict. c. 32, s. 22.

Specimens of notes to be produced.

Sect. 27.—Persons applying for licences to leave a specimen of the notes proposed to be issued, to the intent that the licence may be framed accordingly.

Issuing notes without or contrary to licence, penalty 100*l.*

If any banker, or other person, (except the Bank of England,) issue, or cause to be issued by any agent, any promissory note for payment of money to the bearer on demand, charged with duty, and allowed to be re-issued, without being licensed so to do, or at any other place, or under any other name, style, or firm, than specified in his licence—to forfeit for every offence 100*l.*

Licence not affected by alteration in partnership.

Sect. 28.—Licences to persons in partnership to continue in force for issuing notes, duly stamped, under the name, style, or firm therein specified, until the 10th October following the date, notwithstanding any alteration in the partnership.

Unstamped notes to bearer on demand made out of Great Britain.

Sect. 29.—Promissory notes payable to bearer on demand, made or purporting to be made out of Great Britain, or purporting to be made by or on behalf of persons resident out of Great Britain, not to be negotiable or paid in Great Britain, whether payable there or not, unless stamped as notes in Great Britain.

If any person circulate, or negotiate, offer, or take in payment any such note, or demand, or receive payment of money mentioned therein, from or on account of the drawer, or pay the same, as, or for the drawer, the same not being stamped, to forfeit 20*l.* Not to extend to notes made and payable only in Ireland.

7 Geo. IV. c. 6.

Repealing 3 Geo. IV. c. 70, which suspended the 17 Geo. III.

c. 30, for restraining the negotiation of notes and bills under 5*l.* in England. *See page* 130, *post.*

Sect. 3.—If any body politic or corporate, or any person, make, sign, issue or re-issue in England, any note payable on demand to the bearer, for less than 5*l.* to forfeit 20*l.*

Notes under 5*l.*

Sect. 4.—If any such body or person, in England, publish, utter, or negotiate any note, (not payable to bearer on demand, as before mentioned,) or any bill, draft, or undertaking, being negotiable, or transferable, for 20*s.* or above that sum and less than 5*l.* or on which any such amount remains undischarged, made, drawn, or indorsed in any other manner than as provided by 17 Geo. III. c. 30, to forfeit 20*l.*

Sect. 5.—The penalties under this Act, and which are in lieu of those in the 17 Geo. III. may be sued for and applied as any others under the laws relating to stamp duties.

Recovery of penalties.

Sect. 7.—The Commissioners of Stamps not to issue stamps for notes to bearer on demand for less than 5*l.*

No stamps for notes under 5*l.*

Sect. 9.—Not to extend to drafts on bankers, for payment of money held by such bankers to the use of the drawers.

Not to extend to checks.

Sect. 10.—All notes to bearer on demand for less than 20*l.* to be payable at the place where issued. But this not to prevent such notes from being made payable at other places also.

Notes to bearer under 20*l.* to be payable where issued.

7 Geo. IV. c. 46.

Sect. 1.—Any body politic or corporate, erected for the purposes of banking, or any number of partners, although exceeding six, may carry on the business of bankers in England, and make and issue their bills and notes at any place exceeding sixty-five miles from London, payable on demand, or otherwise, at some place exceeding sixty-five miles from London, and not elsewhere, and borrow, owe or take up money on such bills or notes. Provided they have no house of business or establishment in London, or within sixty-five miles thereof; and provided every one of such persons be responsible for the payment of such bills and notes.

Partnerships of more than six may issue bills and notes beyond 65 miles from London.

Sect. 2.—Provided: not to authorize them, either by any member or agent, to issue or re-issue in London, or within sixty-five miles, any bill or note to bearer on demand, or bank post bill, nor to draw upon any person within that distance any bill on demand, or for less than 50*l.*

Provided that they may draw bills for 50*l.* or upwards, payable in London, or elsewhere, at any period after date or sight. See 3 & 4 Will. IV. c. 83, s. 2, 3 & 4 Will. IV. c. 98, s. 2, and 7 & 8 Vict. c. 32, s. 26.

Sect. 3.—Provided also, not to authorize any such company to borrow, owe, or take up, in London, or within sixty-five miles, money on any bill or note on demand, or at less than six months; nor to make, or issue any bill, or note contrary to 39 & 40 Geo. III. except as hereby provided. Not to prevent such company, by an agent, from discounting in London, or elsewhere, any bill not drawn by, or upon them, or any person for them.

Not to borrow, &c., within that distance on certain bills or notes.

Sect. 4.—Every such company first to make a return to the Stamp Office of the names, &c., of all the partners, and of their bank or firm, and of two or more of the members who have been appointed officers to sue and be sued, and of the name of every place where bills or notes are to be issued.

Company to make returns to Stamp Office.

The account to be filed at the Stamp Office, and a registry thereof to be made and kept in a book to be open for inspection on payment of 1*s.*

Sect. 5.—The account to be made out by the Secretary, or other public officer, and verified on oath before a justice; such account between the 28th of February and 25th of March, every year, to be in like manner delivered.

Copy to be evidence.

Sect. 6.—A copy of any such account, certified by a Commissioner to be a true copy, to be received, in all cases, as evidence of the appointment and authority of the officers named therein, and of the members of the co-partnership.

Sect. 7.—The Commissioners to deliver a certified copy upon application, and payment of 10*s*.

Further accounts on change of officers, &c.

Sect. 8.—The Secretary, or other public officer, as often as occasion shall require, from time to time to deliver, in like manner, a further account, according to the form (B) in the schedule, of the names of any new or additional public officers, and of persons who have ceased to be members, and of new members, and of new or additional places where bills or notes are, or are intended to be issued. Such account to be also kept and filed.

Sect. 9 to 14 relate to proceedings by or against the company.

The Bank may carry on business at any place.

Sect. 15.—The Bank of England to be at liberty, under its by-laws, to empower any committee, or agent, to carry on banking business at any place in England; the notes issued there to be payable, also, there, as well as in London.

Companies may issue unstamped notes on giving bond.

Sect. 16.—Co-partnerships carrying on business under this Act, may issue notes to the bearer on demand, without being stamped, on giving security by bond; two of the Directors or partners to be obligors, together with the cashiers or accountants, as the Commissioners require. The bond to be in such reasonable sum as the duties may amount to in a year; with condition to deliver to the Commissioners within fourteen days after the 5th January, 5th April, 5th July, and 10th October, yearly, a true account, upon oath, of the amount or value of all their notes in circulation on some given day in every week, for a quarter of a year preceding, together with the average thereof; and to pay to the Receiver-General of Stamps, as a composition for the duties for such notes issued within the space of one year, 7*s*. for every 100*l*., and for the fraction of 100*l* of the said average. The Commissioners may fix the time of such payment, and specify the same in the bond. The bond to be renewed whenever the Commissioners think proper, and as often as the same is forfeited, or the parties die, or become bankrupt, or insolvent, or reside beyond sea.

Only four licences to be taken out.

Sect. 17.—No co-partnership to be obliged to take out more than four licences for any number of places in England. If they issue notes at more than four places, all such places, exceeding four, may be inserted in the fourth licence. See 7 & 8 Vict. c. 32, s. 22.

Penalties for not making returns; and for false returns.

Sect. 18.—If any such co-partnership begin to issue bills or notes without having caused such return to be made out and delivered, or neglect to cause the same to be renewed, to forfeit for every week, of such neglect, 500*l*. If the officer make out a false return, or a return not setting forth, truly, all the particulars required, the co-partnership to forfeit 500*l*.; and the officer 100*l*. The officer making false oath to be subject to the pains of perjury.

Issuing certain bills or notes within 65 miles of London, penalty 50*l*.

Sect. 19.—If any such copartnership, by any member, or any agent or other person, issue or re-issue in London, or within sixty-five miles, any bill or note payable on demand, or draw upon any person resident in London, or within sixty-five miles, any bill on demand, or for less than 50*l*.; or borrow, owe or take up in London, or within sixty-five miles, any sum on any bill or note payable on demand, or at less than six months from the borrowing; or make or issue any bill or note contrary to the 39 & 40 Geo. III. c. 28, save as provided by this Act, to forfeit 50*l*.

Not to affect the Bank.

Sect. 20.—This Act not to affect the privileges of the Bank of England, except where the same are expressly altered.

Recovery of penalties.

Sect. 21.—Pecuniary penalties under this Act to be sued for in the Exchequer, as penalties incurred under any Act relating to stamp duties.

7 Geo. IV. c. 67.

Scotland Banks may sue, &c. in name of officer

Sect. 1.—Joint-stock societies or co-partnerships now, or hereafter established in Scotland, for banking, may sue and be sued in the name of the manager, cashier, or other principal officer; provided they observe the regulations of this Act

Returns to be made to the Stamp Office.

Sect 2.—Every such co-partnership before beginning business, and in every year, between the 25th May and 25th July, to cause an account or return to be made out, according to the form in the schedule; the same to contain —

The name, style, or firm of the society;

The names and places of abode of all the members or partners;

The name or firm of every bank established by the society;

The name and place of abode of the manager, cashier, or other principal officer, in the name of whom the society shall sue and be sued; and

The name of every town or place where bills shall be issued;

such return to be made to the Stamp Office at Edinburgh, and be filed there, and an entry and registry thereof made in a book and kept there, to be open for inspection on payment of 1*s*

To be verified.

Sect. 3.—The return to be verified by the oath of the officer before a Justice.

A certified copy to be evidence.

Sect. 4.—A copy of any such return, certified to be a true copy by the Head Collector or Comptroller of Stamps at Edinburgh, to be received in evidence as proof of the appointment and authority of the officer, and of the fact of the persons therein named being members

Sect. 5 —The Collector or Comptroller to deliver to any person applying a certified copy, on payment of 10*s*

Further return on change of officers, &c.

Sect 6.—The manager, or officer, from time to time, when necessary, to deliver, on oath, a further return, according to the form (B) in the schedule, of the name of every new or additional officer in whose name the society is to sue and be sued; and of every person who has ceased to be, or who has become a member, and of every additional town or place where bills or notes are to be issued and made payable; the same to be kept and filed as the other returns.

Sects 7 to 12 relate to proceedings by or against the company.

Only four licences to be taken out.

Sect 13 —No society or co partnership to be obliged to take out more than four licences If notes be issued at more than four places, then, after taking out three licences, all the other places may be included in a fourth licence.

Penalties for issuing bills, &c., without making returns.

Sect 14 —If any such society issue bills, or notes, or borrow, owe, or take up money on their bills or notes, without having caused such return to be made; or neglect to cause the same to be renewed yearly; to forfeit, for every week they neglect, 500*l.*; and if any officer make out a false return, or one not truly setting forth all the required particulars, the co partnership to forfeit 500*l*, and the officer 100*l*; and the officer making a false oath to be liable to the pains and penalties of perjury

Recovery of penalties.

Sect 15.—Penalties under this Act may be sued for in the Exchequer at Edinburgh, as other penalties relating to stamp duties.

9 Geo. IV. c. 23.

Bankers in England licensed for that purpose may issue unstamped notes and bills.

Sect 1.—Any banker in England, (except in London or within three miles,) having first obtained a licence for that purpose, and given security, may issue, on unstamped paper, promissory notes for 5*l.* or upwards, payable to bearer on demand, or to order, not exceeding seven days after sight, and bills, payable to order on demand, or not exceeding seven days after sight, or twenty-one days after date—provided such bills be drawn on a banker in London, Westminster, or Southwark, or at a place where the drawer is licensed, upon himself or his partners, payable at any other place where he is licensed

Licences to be granted

Sect 2 —Two or more Commissioners may grant licences to issue unstamped bills and notes Each licence to be charged with a stamp duty of 30*l.*

Only four licences necessary.

Sect 3 —A separate licence to be obtained for every place where such notes or bills are to be issued or drawn, but no person to be obliged to take out more than four licences, the fourth licence may include all the places not mentioned in the other three See 7 & 8 Vict c 32, s 22

Particulars to be specified Date and termination of licences.

Sect 4 —Licences to specify all the particulars required to be stated in licences to issue notes to bearer on demand, allowed to be re-issued If granted between the 10th Oct and the 11th Nov to be dated 11th Oct, if at any other time to be dated when granted—and to continue in force (notwithstanding any alteration in the copartnership of persons to whom granted), till the 10th Oct following.

The duty on a licence already granted to be allowed.

Sect 5 —Provided that where a banker shall have already obtained a licence, and shall be desirous of a licence under this Act, the Commissioners may allow the duty under the former licence, and grant, in lieu, a licence under this Act, every such last mentioned licence to authorize also the issuing and re issuing of stamped notes

Not to issue both stamped and unstamped notes.

Sect 6 —Provided that if any banker, having a licence under this Act, issue unstamped notes, he is, so long as the licence continues, to make and issue on unstamped paper all his notes to bearer on demand, and is not to be allowed, during the same period, to issue, for the first time, any such note on stamped paper

Security to be given for composition

Sect 7 —Before a licence is granted, under this Act, to any person, he is to give security by bond, conditioned to keep an account of all unstamped notes and bills issued or drawn by him, with the amounts and dates, and of all such notes cancelled, and bills paid, with the dates of cancelling and payment; and to produce such accounts, when required, to the Commissioners, or their officer, and to deliver to them, half-yearly, within fourteen days after the 1st Jan and 1st July, an account, on oath of himself and of his cashier, accountant, or chief clerk, as the Commissioners may require, of the amount or value of all unstamped notes and bills in circulation on Saturday in every week for the preceding half-year, together with the average amount thereof, and to pay 3*s* 6*d* *per cent* of such average

For what period notes and bills are to be deemed in circulation

Sect 8.—Such unstamped notes, payable to bearer on demand, to be deemed to be in circulation from the day of the issuing to the day of the cancelling, both inclusive, except whilst in the hands of the banker who first issued them, or by whom they are expressed to be payable; and such unstamped notes payable to order, and bills, to be deemed to be in circulation from the day of issuing to the day of payment, both inclusive. Provided that notes to order, and bills paid in less than seven days, are to be included in the next Saturday's account after the issuing

By whom and in what sum the bond to be given

Sect 9 —The bond to be given by the person or persons intending to issue or draw such notes or bills, or such and so many of them as the Commissioners require; and to be in 100*l* or such larger sum as the Commissioners shall judge to be the probable amount of a year s composition The Commissioners to fix the times of payment, and they may require the bond to be renewed at their discretion, and as often as the same is forfeited, or any of the parties die, or become bankrupt, or insolvent, or reside abroad

New bond on alteration in partnership

Sect 10 —If any alteration be made in the partnership, whether by the death, retirement, or accession of a partner, a fresh bond to be given, the same to be a security for the duties due, or to become due, on notes and bills issued by the old partnership, and then in circulation, as well as for the duties on those issued, and to be issued by the new partnership.

Exception

Provided, no fresh bond to be necessary by any alteration in any copartnership of more than six persons, the bond given by them to be a security for any duties they may incur so long as they exist, or the persons composing the same, or any of them, carry on business, together or with any other person, saving

the power of the Commissioners to require a fresh bond when they deem it necessary.

Sect 11 —If any such person refuse to renew his bond when forfeited, and as often as is hereby required, to forfeit 100*l.* — Penalty for refusal 100*l.*

Sect 12.—If any person licensed under this Act draw or issue, upon unstamped paper, any note payable to order, or any bill which shall bear date subsequent to the day on which it is issued, to forfeit, for every such note, or bill, 100*l.* — Post-dating unstamped notes or bills.

Sect 13 —This Act not to relieve from the penalties imposed by former Acts upon persons issuing notes or bills not duly stamped, any person who, under any colour or pretence, shall issue any unstamped note or bill, unless such person be duly licensed under, and the notes and bills be in accordance with this Act. — Not to relieve unlicensed persons.

Sect 14 —Penalties under this Act may be recovered in the Exchequer in the name of the Attorney or Solicitor-General. — Recovery of penalties.

Sect 15.—Not to affect the privileges of the Bank of England. — Bank of England.

9 Geo IV. c. 49.

Sect 15.—Drafts payable to bearer on demand, drawn in Great Britain, on a banker within fifteen miles, to be exempted from stamp duty; provided the place where drawn be specified, and the true, or a prior date, be inserted, and provided payment be not directed to be made by bills or notes. — Checks within 15 miles exempt.

9 Geo. IV. c. 65.

Sect. 1.—If any person, by any act, device, or means whatsoever, publish, utter, negotiate, or transfer in England, any note, draft, &c., payable on demand to bearer, being negotiable or transferable, for less than 5*l.*, or on which less than 5*l.* remains undischarged, made or issued, or purporting to be made or issued in Scotland or Ireland or elsewhere out of England, whereso-ever payable, to forfeit 20*l.* — Notes, &c, under 5*l.* drawn out of England.

Sect. 2.—The penalty may be recovered before a Justice as under the 48 Geo. III. c. 88.

Sect. 3.—The Treasury may direct the penalty to be remitted, or mitigated.

Sect. 4.—Not to extend to drafts on bankers.

3 & 4 Will. IV. c. 83.

Sect. 1.—Requiring quarterly accounts of their notes in circulation to be returned by all bankers This was superseded by the 4 & 5 Vict c. 50, and which was again superseded by subsequent Acts.

Sect. 2 —Partnerships exceeding six persons may make any bill or note payable in London by any agent in London, or draw any bill or note upon any agent in London, payable on demand, or otherwise, in London, and for any amount less than 50*l.*, notwithstanding the 7 Geo. IV. c. 46. — Joint-stock banks may draw on agents in London.

3 & 4 Will. IV. c. 98.

Sect. 2.—During the continuance of the exclusive privilege of banking by the Bank of England, no corporation, nor any society or company exceeding six persons, shall make or issue in London, or within sixty-five miles, any bill or note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand Provided that nothing herein, or in the 7 Geo IV c 46, shall prevent any corpo- — No company exceeding six to issue within 65 miles of London any bill or note on demand.

May make their bills and notes payable in London.

ration, society, or company carrying on and transacting banking business at a greater distance than sixty-five miles from London, and not having any house of business or establishment, as bankers, in London, or within sixty-five miles, from making and issuing their bills and notes, payable on demand, or otherwise, at the place at which the same shall be issued, being more than sixty-five miles from London, and also in London, and from having an agent or agents in London, or at any other place at which such bills or notes shall be made payable, for the purpose of payment only; but no such bill or note shall be for less than 5*l.*, or be re-issued in London, or within sixty-five miles.

Joint-stock banks may carry on business in London.

Sect. 3.—To remove doubts—any society or company of more than six persons may carry on banking business in London, or within sixty-five miles, provided they do not borrow, owe, or take up in England, any money on their bills or notes, payable on demand, or at any less time than six months from the borrowing

4 & 5 Vict. c. 50.

Requiring returns to be made monthly by all bankers in the United Kingdom of their notes in circulation, from all which an aggregate average account was to be made and published. This Act is superseded by the 7 & 8 Vict. c. 32, as to England; the 8 & 9 Vict. c. 38, as to Scotland; and the 8 & 9 Vict. c. 37, as to Ireland.

7 & 8 Vict. c. 32.

Bank Charter Act.

"An Act to regulate the issue of Bank Notes, and for giving to the Governor and Company of the Bank of England, certain privileges, for a limited period."

Bank of England notes exempt from stamp duty.

Sect. 7.—After 31st August, 1844, the Bank of England to be released and discharged from payment of any stamp duty, or composition, in respect of their notes payable to bearer on demand, which notes are to be exempt from stamp duty.

Notes to be issued only by certain bankers

Sect. 10.—No person other than a banker, who, on the 6th May, 1844, was lawfully issuing his own bank notes, to be allowed to make or issue bank notes in any part of the United Kingdom.

No banker to draw, &c., any bill or note payable to bearer on demand except as herein mentioned.

Sect. 11.—No banker to draw, accept, make or issue in England or Wales any bill, or note, or engagement for the payment of money, payable to bearer on demand; or to borrow, owe, or take up, in England or Wales, any money on such bills or notes of such banker,—save that any banker who was, on the 6th May, 1844, carrying on the business of a banker in England or Wales, and lawfully issuing his own bank notes under a licence, may continue to issue such notes, to the extent, and under the conditions, after mentioned. The right of any company or partnership to continue to issue notes not to be affected by any change in the personal composition of such partnership, either by transfer of shares, or admission, or retirement of partners: Provided, that no company, not now consisting of more than six persons, shall be allowed to issue notes after they shall exceed six.

And not after bankruptcy.

Sect. 12.—Any banker in the United Kingdom becoming bankrupt, or ceasing to carry on business or discontinuing to issue bank notes, not to be allowed, at any time thereafter, to issue notes.

The average circulation to be ascertained and limited.

Sect. 13.—Bankers in England and Wales claiming to issue bank notes, to give notice to the Commissioners of Stamps and Taxes, who are to ascertain and certify the average notes in circulation during the twelve weeks next preceding the 27th April last; no such banker to have in circulation, upon the average of four weeks, a greater amount of notes than that so certified.

Where banks now united.

Sect. 14.—If banks have become united, the Commissioners may certify the average of both, as the amount which the united bank may issue.

Sect 15 —The Commissioners to publish their certificate in the *London Gazette* the Gazette to be conclusive evidence of the amount which the banker is to have in circulation

Certificate to be published

Sect 16 —In case it be made to appear, that two or more banks, each of not more than six persons, have, by written contract, become united subsequently to the passing of the Act, the Commissioners may certify the aggregate of the amounts of notes which such separate banks were authorized to issue, and so from time to time, such certificate to be published and the amount therein stated to be the limit which such united bank may have in circulation Provided, no such united bank to issue notes after the number of partners exceed six

Where banks become united the Commissioners to certify the average of both

Sect 17 —If the monthly average circulation of bank notes of any banker at any time exceed the amount which he is authorized to issue and have in circulation under this Act, such banker to forfeit a sum equal to the excess

Penalty for exceeding average

Sect 18 —Every banker in England and Wales, issuing bank notes, on some day in every week, (to be fixed by the Commissioners,) to transmit to the Commissioners an account of the amount of his notes in circulation on every day during the preceding week, and of the average during the week, and on completing every four weeks, to annex the average circulation during such four weeks, and also the amount he is authorized to issue The account to be signed by the banker or his chief cashier, or a managing director, partner, or chief cashier, in case of a company or partnership, and made in the form in Schedule (B) to the Act So much of the return as states the weekly average to be published in the next succeeding *London Gazette* in which the same may be conveniently inserted Any banker refusing, or neglecting to render such account, or rendering a false account, to forfeit 100*l*

Bankers to render accounts of their daily circulation

The weekly average to be published

Sect 19 —To ascertain the monthly average, the aggregate amount of each banker in circulation on every day of business during the four weeks, to be divided by the number of days of business in such four weeks, and the average, so ascertained, to be deemed to be the average in circulation Such average not to exceed the amount certified

Mode of ascertaining the average in circulation.

Sect 20 —Every book of any banker, in which is entered any account, minute, or memorandum, of or relating to the bank notes issued by him, or in circulation, or any account, minute, or memorandum, the sight, or inspection whereof may tend to secure the rendering of true accounts, or to test the truth of any such account, to be open for the inspection and examination of any officer of Stamp Duties authorized by the Commissioners in writing Such officer to be at liberty to take copies or extracts Any banker, or other person, keeping, or having the custody of, or power to produce any such book, upon demand made by such officer, showing (if required) his authority, refusing to produce the same, or to permit the officer to inspect the same, or take copies thereof, or extracts therefrom or of, or from any account, minute, or memorandum as aforesaid to forfeit 100*l* Provided, the Commissioners not to exercise the powers aforesaid, without the consent of the Treasury

Books to be open to inspection.

Sect. 21 —Every banker in England and Wales now, or hereafter, carrying on business, on the 1st January in each year, or within fifteen days after, to make a return to the Commissioners of his name, residence and occupation, or, in case of a company, of the name residence, and occupation of every person composing, or being a member of the same, and, also, the name of the firm under which he or they carry on business, and of every place where such business is carried on, and if he omit or refuse to make such return, or make other than a true one, to forfeit 50*l* The Commissioners, on or before the 1st March to publish in some newspaper circulating in each town or county, a copy of such return of every banker carrying on business within the same

Bankers to make annual returns of their names, &c

Same to be published

Sect 22 —Every banker, liable by law to take out a licence to authorize the issuing of notes or bills shall take out a separate and distinct licence for every town, or place, at which he shall, by himself or his agent, issue any such bills

A separate licence for each town,

except as mentioned.

or notes. Provided that no banker, who on the 6th May, 1844, had four licences, then in force, for issuing notes at more than four places, is to be required to take out more than four licences for the same places.

Agreements with the Bank of England to cease.

Sect. 23.—All agreements between the Bank of England and the bankers named in the schedule (C) to the Act, (who have ceased to issue their own notes,) to cease on the 31st December next. And the Bank to pay them a composition of 1*l. per cent.* on the average amount of Bank of England notes issued by them respectively, to be ascertained as in the Act is mentioned.

The Bank may agree with bankers to issue Bank of England notes,

Sect. 24.—The Bank of England to be at liberty to agree with banks hereafter ceasing to issue their own notes, to pay them the same composition; subject to the same regulations; the composition to the banks in schedule (C) not to exceed 1*l. per cent.* on the sum set against their names respectively, in a list delivered to the Commissioners of Stamps by the Bank of England (signed by the chief cashier); the composition to other banks not to exceed 1*l. per cent.* on the notes they would be entitled to issue.

until 1856.

Sect. 25.—All compositions payable to any such bankers to cease on the 1st August, 1856, unless previously determined.

Joint-stock banks may draw bills in London.

Sect. 26.—Any society or company, although exceeding six, carrying on business of banking in London or within 65 miles, may draw, accept or endorse Bills of Exchange, not payable to bearer on demand, anything in the 4 Will. IV. c. 98, or any other Act to the contrary notwithstanding.

The Bank to have exclusive privileges.

Sect. 27.—The Bank of England to have and enjoy all the exclusive privileges, &c., given by the 4 Will. IV. aforesaid, except where altered by this Act, subject to redemption on giving twelve months' notice after the 1st Aug. 1855, and upon paying the sums in the Act mentioned.

Interpretation. "Bank notes." "Bank of England notes." "Banker." "Persons, numbers and genders."

Sect. 28.—The term "bank notes" to extend and apply to all bills or notes for the payment of money to the bearer on demand, other than notes of the Bank of England. The term "Bank of England notes" to extend and apply to the promissory notes of the Bank of England payable to bearer on demand. The term "banker" to extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes, or otherwise, except only the Bank of England. The word "person" to include corporations; the singular number to include the plural; the plural the singular; and the masculine gender the feminine, unless repugnant.

7 & 8 Vict. c. 113.

To regulate Joint-stock Banks in England.

Future Joint-stock banking companies to obtain patents.

By this Act no company of more than six persons is to be allowed to carry on the business of bankers in England, under agreement made after the 6th May, 1844, except under letters patent to be obtained on petition to the Queen in council, signed by at least seven of the company, setting forth the particulars specified in the Act; which letters patent Her Majesty may grant, on the report of the Board of Trade that the provisions of the Act have been complied with.

The company not to commence business until all the shares have been subscribed for, and the deed of partnership has been executed by all the holders, and at least one-half of each share has been paid up.

The company to be incorporated for a term not exceeding twenty years.

The Act contains various provisions relating to the liabilities and privileges of every such company and its members.

Memorial to be registered.

Sect. 16.—Within three months after the grant, and before the company begin business a memorial to be made out, (according to the form prescribed,) setting forth the title or firm, the names and places of abode of all the members, directors and managers, or other like officers, the name or firm of every

bank established by such company, the name of every place where the business is to be carried on, a new memorial to be made every year, between the 28th February and the 25th March, every such memorial to be delivered, and filed and kept at the Stamp Office, and an entry thereof to be made in a book which any person is to have liberty to search on payment of one shilling, the company to cause to be printed and kept, in a conspicuous place in their office or principal place of business, a list of the registered names and places of abode of all the members

Sect 17 —The manager or one of the directors, as occasion shall require, to make out and deliver a further memorial of the name and place of abode of every new director, manager, or other like officer, and of any person who shall have ceased to be or have become a member, and of the name of any new town or place, where the business is carried on, such account to be filed, and kept and entered and registered in like manner

Memorials of occasional changes

Sect 18 —The said several memorials to be signed by the manager or one of the directors, and be verified by his declaration before a Justice, or a Master or Master Extraordinary in Chancery made pursuant to the provisions of the 5 & 6 W IV c 62

Memorial to be verified.

Sect 19 —A true copy of any such memorial, certified under the hand of one of the Commissioners, upon proof made that such certificate has been signed with the handwriting of the person certifying the same, whom it shall not be necessary to prove to be a Commissioner, to be received in evidence as proof of the contents and proof not to be required that the person by whom the memorial shall purport to be verified was, at the time, the manager or one of the directors

Evidence of memorials.

Sect 20 —The Commissioners to deliver a certified copy on payment of ten shillings

Sect 21 —The persons whose names appear from time to time in the then last-delivered memorial, and their legal representatives, to be liable to all legal proceedings, as existing shareholders, and be entitled to be reimbursed out of the funds or property of the company

Liabilities to continue till new memorials

Sects 22 to 43 contain provisions relating to the business and property of the company and its members

Sect 44 —Companies registered before 4th July last may continue their business for twelve months

Sect 45 —Such companies may petition for letters patent under this Act, and, if granted, may carry on their business according to it

Sect 46 —All contracts and agreements with such company shall continue in force, and may be enforced as if the company had been incorporated before the making of any such contract or agreement

Agreements with them to continue

Sect 47 —Companies established on the 6th May, 1844, within sixty-five miles from London, and not within the provisions of this Act, to sue and be sued in the name of one of its officers, and all judgments, &c, may be in force as by the 7 Geo IV c 46, provided such companies deliver the accounts required by that Act All the provisions of the said Act, as to such accounts, to apply to the accounts or returns to be made out by such companies

Existing companies within 65 miles to sue and be sued in the name of an officer

8 & 9 Vict c 38

To regulate the Issue of Bank Notes in Scotland

Scotland

Bankers claiming to be entitled to issue bank notes in Scotland to give notice thereof to the Commissioners, who are to ascertain and certify the average amount of the bank notes of every such banker in circulation for one year preceding the 1st May, 1845, and such banker may continue to issue his own bank notes to the extent of the amount so certified, and of the amount of gold and silver coin held at his head office or principal place of issue, in the proportion and manner

Bankers claiming to issue Bank notes to give notice. The average circulation to be ascertained

Future issue to be limited.

hereinafter mentioned, but not to any further extent; and after the 6th December, 1845, no bankers to make or issue bank notes in Scotland, except such as shall have obtained such certificate.

Provision for banks now united.

Sect. 2.—If two or more banks have, by written contract, become united within the year next preceding such first day of May, the Commissioners may ascertain the average amount of the notes of each, and certify a sum equal to that of both.

Certificate to be published.

Sect. 3.—The Commissioners to publish their certificate in the *London Gazette;* the *Gazette* to be conclusive evidence of the amount of bank notes authorized to be issued and had in circulation, exclusive of an amount equal to the monthly average amount of the gold and silver coin held.

Where banks become united.

Sect. 4.—Where two or more banks shall, by written contract, become united subsequently to the passing of this Act, the Commissioners may certify the aggregate of the amount of bank notes which such separate banks were authorized to issue; such certificate to be published and the amount therein to be the limit of the amount of bank notes which such united bank may have in circulation, exclusive of such gold and silver coin.

No notes for fractions of a pound.

Sect. 5.—All bank notes issued or re-issued in Scotland shall be expressed to be for payment of a sum in pounds sterling, without fractional parts, under a penalty of 20*l.*

Limitation of circulation.

Sect. 6.—No banker to have in circulation, upon the average of a period of four weeks, a greater amount of notes than an amount composed of the sum so certified, and the average amount of gold and silver coin held during the same period.

Banks to render accounts weekly.

Sect. 7.—Every banker, on some one day in every week, to be fixed by the Commissioners, to transmit to them a true account of the amount of his bank notes in circulation at the close of the business on the next preceding Saturday, distinguishing the notes of five pounds and upwards, and the notes below, and also an account of the total amount of gold and silver coin held by him at his head office or principal place of issue, and of the total amount of gold and silver coin in Scotland held by such banker; and on completing the first and each successive period of four weeks, to annex the average amount of bank notes in circulation during the said four weeks, distinguishing the notes of five pounds and upwards and the notes below, and the average amount of gold and silver coin respectively, and also the amount of notes authorized to be issued; every such account to specify the head office or principal places of issue of such banker, and be verified by the signature of such banker or his chief cashier, or, in case of a company, by the signature of the chief cashier or other officer duly authorized by the directors; and be made in the form annexed marked (A); for neglect to render account, or rendering a false account, to forfeit 100*l.*

What deemed in circulation.

Sect. 8.—All bank notes shall be deemed to be in circulation from the time the same shall have been issued until the same shall have been actually returned.

Commissioners to make a monthly return.

Sect. 9.—From the returns so made by each banker, the Commissioners, at the end of the first and each successive period of four weeks, to make out a general return in the form annexed, marked (B), of the monthly average amount of bank notes in circulation of each banker, and of the average amount of all the gold and silver coin held by him, and certifying, under the hand of any officer of the commissioners, duly authorized in the case of each such banker, whether such banker has held the amount of coin required by law during the period to which the said return shall apply; and publish the same in the *London Gazette.*

Sect. 10 states the mode of ascertaining the monthly average by the Commissioners.

Proportions of gold and silver coin.

Sect. 11.—In taking account of the coin, no amount of silver coin exceeding one-fourth part of the gold to be taken into account; no banker to issue bank notes on any amount of silver coin held exceeding the proportion of one-fourth of the gold.

Sect. 12.—All the books of any banker, in which shall be entered any account, minute, or memorandum of or relating to the bank notes issued by such banker, or the amount in circulation, or the gold and silver coin held, or any account, minute, or memorandum, the inspection whereof may tend to secure the rendering of true accounts, or test the truth of any such account, shall be open for the inspection of any officer of stamp duties, authorized in that behalf by the Commissioners, or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account, and to inspect and ascertain the amount of any gold or silver coin, and for any refusal such person shall forfeit one hundred pounds: provided always, that the Commissioners shall not exercise the powers aforesaid without the consent of the Treasury. Books may be inspected.

Sect. 13.—Every banker, other than the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company, on the first day of January in each year, or within fifteen days, to make a return to the Commissioners, in London, of his name, residence, and occupation, or, in the case of a company, of the name, residence, and occupation of every member, and also the name of the firm under which such banker or company carry on business, and of every place where such business is carried on; and for default to forfeit fifty pounds; the Commissioners on or before the first day of March in every year to publish in some newspaper circulating within each town or county respectively in which the head office or principal place of issue of any such banker is situate, a copy of the return. Bankers to return their names once a year to the Stamp Office.

Sect. 14.—If the monthly average circulation of bank notes of any banker at any time exceed the amount such banker is authorized to issue and to have in circulation, such banker to forfeit a sum equal to the excess. Penalty on issuing excess.

Sect. 15.—Nothing in the 3 & 4 Will. IV. c. 98, shall extend to make the tender of Bank of England notes a legal tender in Scotland: provided, not to be construed to prohibit the circulation in Scotland of Bank of England notes. Bank of England notes not a legal tender.

Sect. 16.—All promissory or other notes, bills, drafts, or undertakings in writing, being negotiable or transferable, for the payment of any sum, or any orders, notes, or undertakings in writing, being negotiable or transferable, for the delivery of any goods, specifying their value in money, less than the sum of twenty shillings, after the first day of January, 1846, to be absolutely void and of no effect; and if any person publish or utter in Scotland any such notes, bills, drafts, or engagements as aforesaid for a less sum than twenty shillings, or on which less than the sum of twenty shillings shall be due, or negotiate or transfer the same in Scotland, to forfeit not exceeding twenty pounds nor less than five pounds, at the discretion of the Justice who shall hear and determine such offence. Notes for less than 20*s.* not negotiable in Scotland.

Sect. 17.—All promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of twenty shillings, or above that sum and less than five pounds, or on which twenty shillings, or above that sum and less than five pounds, shall remain undischarged, to specify the names and places of abode of the persons to whom or to whose order the same shall be made payable, and bear date before or at the time of drawing or issuing thereof, and be made payable within twenty-one days next after the date, and not be transferable or negotiable after the time hereby limited for payment; and every indorsement thereon to be made before the expiration of that time, and bear date at or not before the time of making thereof, and specify the name and place of abode of the person to whom or to whose order the money is to be paid; and the signing of every such note, bill, draft, or undertaking, and indorsement, to be attested by one subscribing witness at the least; and which notes, bills of exchange, or drafts, or undertakings, may be made or drawn in words to the purport or effect as set out in the schedules annexed; and all notes, bills, drafts, or undertakings in writing, being negotiable or transferable, for the payment of Notes of 20*s.*, or above, and less than 5*l.*, to be drawn in certain form.

twenty shillings, or any sum of money above that sum and less than five pounds, or in which twenty shillings, or above that sum and less than five pounds, shall remain undischarged, in any other manner than as aforesaid, and also every indorsement other than as aforesaid, to be absolutely void. Not to extend to any such bank notes as shall be lawfully issued by any banker authorized by this Act to continue the issue of bank notes.

Penalty for issuing notes to bearer on demand for less than 5*l.*

Sect. 18.—If any body politic or corporate or any person make, sign, issue, or re-issue in Scotland any promissory note payable on demand to the bearer thereof for any sum less than five pounds, except the bank notes of such bankers as are hereby authorized to issue bank notes, every such body or person for every such note to forfeit twenty pounds.

Penalty for uttering any transferable notes, &c., for less than 5*l.*

except as allowed.

Sect. 19.—If any body or person publish, utter, or negotiate in Scotland any promissory or other note (not being the bank note of a banker hereby authorized to issue bank notes), or any bill, draft, or undertaking in writing, being negotiable or transferable, for the payment of twenty shillings, or above that sum and less than five pounds, or on which twenty shillings, or above that sum and less than five pounds, shall remain undischarged, made, drawn, or indorsed in any other manner than as is hereinbefore directed, every such body or person to forfeit twenty pounds.

Not to prohibit checks on bankers.

Sect. 20.—Not to prohibit any draft or order drawn by any person on his banker for the payment of money to the use of the person by whom such draft or order shall be drawn.

Mode of recovering penalties.

Sect. 21.—Penalties may be sued for in the name of the Advocate or Solicitor-general, or Solicitor of Stamps and Taxes, or of any person authorized by the Commissioners, or in the name of any Officer of Stamp Duties in the Exchequer; or, in respect of any penalty not exceeding twenty pounds, before a Justice as any other penalties relating to stamp duties; and the Commissioners, either before or after proceedings, may mitigate any such penalty, and stay proceedings, and give all or any part of such penalties to any informer.

8 & 9 Vict. c. 76.

Recovery of penalties under 7 & 8 Vict. c. 32.

Sect. 5.—The penalties imposed by the 7 & 8 Vict. c. 32, may be recovered in the name of the Attorney or Solicitor-general, or any person authorized in writing by the Commissioners of Stamps and Taxes; who may, before or after proceedings commenced, mitigate or compound any penalty, as they may think fit, all such penalties to be deemed part of the stamp revenue.

Ireland.

The statutes in Ireland relating to bills and notes, and to bankers, are the following, *viz.*: 55 Geo. III. c. 100; 56 Geo. III. c. 56, s. 45; 5 Geo. IV. c. 73; 6 Geo. IV. c. 42; 9 Geo. IV. cc. 80 & 81; 5 & 6 Vict. c. 82; and 8 & 9 Vict. c. 37; for which see APPENDIX.

BILLS AND NOTES FOR 20*s*. AND LESS THAN 5*l*. IN ENGLAND.

17 Geo. III. c. 30.

Sect. 1.—Bills, notes and undertakings for 20*s*., or above, and less than 5*l*., or on which any such sum is undischarged, being negotiable or transferable, to be drawn as follows, viz.

To specify the names and residences of the person to whom, or to whose order any such bill or note is payable.

To bear date before, or on the day of drawing or issuing, and not subsequent.

To be made payable within 21 days after date, and not to be transferable or negotiable after the time limited for payment.

Every indorsement to be made within the same time, and to bear date on the day it is made, and to specify the name, &c., of the indorsee.

The signing of the bill or note and every indorsement to be attested.

All such bills and notes drawn otherwise than as aforesaid, and the indorsements thereon, to be void.

Sect. 2.—The publishing, uttering, or negotiating in England of any such bill, note, &c., made in any other manner than hereby permitted, and also the negotiating of any such note after the same is due, is hereby prohibited under the like penalties as in the 15 Geo. III. c. 51.

Note.—See the 7 Geo. IV. c. 6, s. 5, where penalties are substituted for those in the 17 Geo. III. c. 30. This last-mentioned Act was temporary only, but was made perpetual by the 27 Geo. III. c. 16; its operation was suspended from time to time, and finally till the 5th January, 1833, by the 3rd Geo. IV. c. 70, which Act was repealed by the 7 Geo. IV. c. 6, thus bringing it (17 Geo. III. c. 30) into immediate operation.

BILLS AND NOTES UNDER 20*s*. IN ENGLAND.

15 Geo. III. c. 51.

Sect. 1.—All negotiable bills and notes under 20*s*. declared to be void.

Sect. 2.—If any person publish, utter, or negotiate any such bill or note, to forfeit, not exceeding 20*l*. nor less than 5*l*.

Sect. 3.—The justice, before whom any offender is convicted, to cause the conviction to be made out in the form given.

Note.—This Act was temporary only, but was made perpetual by 37 Geo. III. c. 16.

48 Geo. III. c. 88.

Sect. 1.—Repealing 15 Geo. III. c. 51.

Sect. 2.—All notes, bills, drafts or undertakings negotiable, or transferable for money, or any orders, notes or undertakings negotiable or transferable for the delivery of goods specifying the value in money, less than 20*s*., are declared to be void.

Sect. 3.—If any person publish, utter, negotiate, or transfer, any such note, or bill, &c., to forfeit, not exceeding 20*l*., nor less than 5*l*.

Sect. 4.—Justices may hear and determine offences.

Sect. 8.—Penalties to be applied, one-half to the informer, and one-half to the poor of the parish.

Bills and notes cannot be stamped.

BILLS OF EXCHANGE and promissory notes, in regard to the operation of the stamp laws, differ from nearly all other instruments, in two particulars: first, that they cannot be stamped after they are written; and, secondly, that they must be impressed with appropriate stamps. With regard to the first; although, in general, instruments may be stamped after they are completed, upon the payment of certain penalties, and, sometimes, without; it is not so with bills and notes, which the Commissioners are prohibited from stamping; to this, however, there is one exception, and one only; *viz.*: when a bill, or note, is written on a stamp of an improper denomination, but of sufficient value, in which case the Commissioners are permitted to stamp it, under the terms specified in the 37 Geo. III. c. 136, ss. 5 & 6. It will thus be seen that a bill or note, written upon unstamped paper, or upon an improper or insufficient stamp, is not only not available, in law or equity, in that state, but, with the exception noticed, is incapable of being made so; it is, in truth, only waste paper, and no laches can be objected to the holder for not presenting it in due time for payment, or for not giving notice of dishonour (*a*); nor, in bankruptcy, can a debt, on such an instrument, be proved (*b*).

Exception.

Equity will not relieve.

Relief will not be given in equity, upon a note or bill void, at law, for want of a stamp (*c*). On a bill for an injunction to restrain proceedings upon a bond given under an agreement made on the plaintiff's marriage, by which 200*l.* was to be secured to the plaintiff by the defendant's note, to be settled, where the note was given, but on a wrong stamp, the Court held, that the plaintiff was entitled to have a security according to the terms of the agreement, as admitted by the answer, to be settled on the husband and wife, which materially varied from the note (*d*). Here the equity was on the agreement, and the note was not received as evidence to establish it. See further, as to the admission of unstamped writings for collateral purposes, under "INSTRUMENTS."

It cannot be considered necessary, or useful, to extract the cases,

(*a*) *Wilson* v. *Vysar*, 4 Taunt. 288; *Cundy* v *Marriott*, 1 B. & Ad. 696.

(*b*) *Ex parte Manners*, 1 Rose, 68.

(*c*) *Price* v. *Toulmin*, 5 Ves. J., 235.

(*d*) *Aylett* v. *Bennett*, 1 Anst. 45.

under the old law, as to bills or notes written upon stamps of improper denomination or value; nor to attempt to reconcile, apparently, adverse decisions; and their aid is not required, to establish so plain a proposition, as that a bill or note is unavailing, unless it be properly stamped (*e*); the observation of Sir *James Mansfield*, in *Chamberlain* v. *Porter*, may be quoted as sufficient for all purposes, in reference to such cases, and as still applicable, that "it was not necessary to refer to all the Acts, the 37 Geo. III. c. 136 was a clear legislative declaration that the stamp must be of the proper denomination, but that Act did not authorize the stamping of a note previously made, and bills and notes the Commissioners were, by the 31 Geo. III. c. 25, forbidden to stamp after they were made."

Upon the subject of the second distinctive feature in instruments of this description, remarks have already been made in the Introductory Chapter of this work (*f*). It will be there seen that, under the authority of the 3 & 4 Will. IV. c. 97, s. 16, the Commissioners have provided particular stamps for bills and notes, and also for receipts. These stamps bear upon them the names of those instruments respectively, and, also, certain figures, denoting the date of the impression; for any of such instruments, no other than a stamp thus appropriated will be availing. As to bills and notes stamped after they are written, see page 174, *post*.

Unstamped bills admitted to show terms of deposit.

Unstamped bills and notes, as well as other instruments, may be admitted in evidence for collateral purposes.

A bill given as a security for money deposited with a banker, but rendered wholly invalid, as such, by an alteration of the rate of interest, was allowed, in *Sutton* v. *Toomer* (*g*), to be given in evidence, to prove the terms on which the money was deposited, evidence of the deposit having been given.

To prove a collateral fact.

And in an action for money lent, where the defence was, that the defendant was made drunk by the plaintiff, and that he received no part of the money, the plaintiff produced an unstamped promissory note for the amount, which the jury were allowed to look at, as a contemporary writing, to prove or disprove the fraud imputed (*h*)

To prove a fraud.

And in *Keable* v. *Payne* (*i*), a check on a banker, not drawn

(*e*) *Aitcheson* v. *Sharland*, 1 Esp. 292; *Farr* v. *Price*, 1 East, 54; *Taylor* v. *Hague*, 2 East, 414; *Chamberlain* v. *Porter*, 1 N. R. 31; *Manning* v. *Lewis*, Bayl. on Bills, 454.

(*f*) Page 4, *ante*.

(*g*) 7 B. & C. 416; 1 Man. & Ry. 125.

(*h*) *Gregory* v. *Fraser*, 3 Camp. 454.

(*i*) 8 Ad. & E. 555; 3 Nev. & P. 531.

according to the regulations relating to instruments of that description, and, therefore, liable to stamp duty as a bill of exchange, but which was not stamped, was admitted, as an ingredient in the fraud practised upon the plaintiff, upon which his action was grounded.

Indorsement on an unstamped bill read.

In *Manly* v. *Peel* (*k*), a memorandum by the defendant, indorsed on an unstamped promissory note, that he had paid a sum for interest, was allowed to be looked at by the jury, as evidence of an admission, that a principal sum was due at a certain time.

An unstamped bill may be given in evidence to show that it is void.

In the case of payment pleaded in an action on the original demand, where such payment was by means of a bill, the plaintiff was allowed to give the bill in evidence, to show that it was on a wrong stamp (*l*). On the trial the bill was rejected; but, on a motion for a new trial, the Court all agreed, (including the learned Judge who tried the cause,) that the bill should have been received; it was not offered to establish it, but, on the contrary, to show that it was "not good, useful, or available."

But that the jury ought not to be permitted to know the contents of an unstamped instrument, and to draw a conclusion of fact from it, was held by Lord *Tenterden* in *Sweeting* v. *Halse* (*m*).

See further, as to the admission of unstamped instruments, for collateral purposes, under the head "INSTRUMENTS."

A void bill or note does not discharge the original demand.

The taking of a bill or note which is void for want of a stamp, or which becomes vitiated, does not operate as a discharge of the original demand; the plaintiff, therefore, may recover on the common counts, if the bill or note cannot be received. See *Ruff* v. *Webb* (*n*); *Wilson* v. *Kennedy* (*o*); *Brown* v. *Watts* (*p*); *Tyte* v. *Jones* (*q*); in which latter case, evidence was admitted of the defendant's acknowledgment of the debt at the time when the note was presented to him; *Cundy* v. *Marriott* (*r*); where it was held, that notice of dishonour of a bill on an improper stamp, was not necessary; the bill was worth nothing; and *Sloman* v. *Cox* (*s*), and also *Atkinson* v. *Hawdon* (*t*), where the bill had been vitiated by an alteration in a material part. So, also, where a note, made by a third person, and indorsed to the defendant, and by him indorsed over to the plaintiff in payment for goods, but which was

(*k*) 5 Esp. 121.
(*l*) *Smart* v. *Nokes*, 6 M. & G. 911; 13 L. J. R. (N. S.) C. P. 79; 7 Scott, N. R. 786; 8 Jurist, 44.
(*m*) See "INSTRUMENTS."
(*n*) 1 Esp. 129.
(*o*) 1 Esp. 245.
(*p*) 1 Taunt. 353.
(*q*) 1 East, 57, note.
(*r*) *Ante*, page 132.
(*s*) 1 C. M. & R. 471.
(*t*) 2 A. & E. 628; 4 N. & M. 409.

discovered to want the words "or order," the plaintiff was held to be entitled to recover on the count for goods sold (*u*).

In this last case, *Tindal*, C. J., said, had there been a second stamp, the defendant's indorsement might have operated as the making of a new note, but as this was a promissory note at first, the stamp then affixed was exhausted, and the second transfer was a nullity for want of a stamp. It was also held, in *Puckford* v. *Maxwell* (*x*), that the payee of a dishonoured bill, the drawer having no effects in the hands of the drawee, may treat it as a nullity, and resort to his original contract. In *Singleton* v. *Ballot* (*y*), where a book was produced, in which an account was stated and signed, but which contained a promise to pay, and could not be read, being unstamped, the witness, on being examined by the Judge, proved an admission of the debt by the defendant before the account was signed, and it was held sufficient. See also *Ashley* v. *Ashley* (*z*) and *Maran* v. *Gillon* (*a*).

The plaintiff precluded from going on the original contract in certain cases.

But where the plaintiff's attorney, in the particular of demand, merely stated the action to be on a promissory note, the plaintiff was held to be precluded from giving other evidence, (the note being improperly stamped,) notwithstanding the declaration contained the usual money counts (*b*).

And in a case where a creditor consented to take part of his demand at once, and give a month for the remainder, a part being then paid, and a note, on a wrong stamp, given for the residue, Lord *Kenyon*, on the trial of an action for the balance, brought before the expiration of a month, held, that the contract was entire, and that the plaintiff should have applied for another bill, or waited a month (*c*).

The acceptor is liable to an indorsee on the bill only.

In an action by an indorsee, against the acceptor of a bill, altered after acceptance, by substituting "after sight" for "after date," the defendant being, by such alteration, discharged, the plaintiff wanted to go on the common counts, and offered other evidence, but Lord *Kenyon* refused it, observing that the acceptor was only liable on the bill, which being vitiated, his liability was at an end (*d*).

And so, also the drawer,

And, where the drawer indorsed the bill over in payment of goods, and the indorsee, after acceptance, vitiated it by altering the

(*u*) *Plimley* v. *Westley*, 2 Bing. N. C. 249; 1 Hodges, 324.
(*x*) 6 T. R. 52.
(*y*) 2 Tyr. 409; *nom. Singleton* v. *Barrett*, 2 C. & J. 368.
(*z*) 1 Moo. & P. 186.
(*a*) Irish Cir. Rep. 99.
(*b*) *Wade* v. *Beasley*, 4 Esp. 7.
(*c*) *Swears* v. *Wells*, 1 Esp. 317.
(*d*) *Long* v. *Moore*, 3 Esp. 155, note.

where the bill is vitiated by the indorsee.

time of payment, it was held that he had thereby made the bill his own, and was not entitled to recover against the drawer for goods sold, although the drawer might have had a cross action, for the special damage done by the destruction of the bill (*e*).

No stamp required for the interest.

A bill or note, drawn expressly for the payment of money, with lawful interest thereon, is chargeable with duty only for the principal sum (*f*). Nor does it make any difference, that interest is secured from a date prior to that of the instrument (*g*). See also "BONDS," and "MORTGAGES."

Bills or notes at the option of holder.

Instruments of an equivocal or ambiguous character, may be treated by the holder as either of one description or the other, as he pleases. In *Shuttleworth* v. *Stevens* (*h*), the plaintiff declared on the following, as a Bill of Exchange, *viz.* :—

"Two months after date pay to the order of *J. J.*, 78*l.* 11*s.*, for value received. *T. S.*
at Messrs. *J. M. & Co.*"

Lord *Ellenborough* held that the declaration was right, although the document might have been declared on as a promissory note, at the option of the holder.

The same was held in *Allan* v. *Mawson* (*i*), in respect of an instrument in precisely the same form; but, in this case, the word "*at*" was written in very small letters, and Lord *Ellenborough*, although he said he should have no hesitation in deciding that, *in point of law*, it was a bill, left it to the jury to say, whether the manner in which the word was written, was not intended to deceive, and if so, that then the instrument was a bill in *point of fact*; the word being struck out, it would be in the common form.

In *Edis* v. *Bury* (*k*), the plaintiff declared on a promissory note, which was in the following form, *viz.* :—

"Three months after date, I promise to pay to Mr. *Jn. Bury*, or order, 44*l.* 11*s.* 5*d.*, value received.
J. B. Grutherot, *J. B.*
35, Montague Place, Bedford Square."

Abbott, C. J., thought this was a note, but reserved the point. The Court was of opinion, that the plaintiff might treat it either as a bill, or as a note, but that it was, clearly, a note.

(*e*) *Alderson* v. *Langdale*, 3 B. & Ad. 660.
(*f*) *Israel* v. *Benjamin*, 3 Camp. 40; *Preussing* v. *Ing*, 4 B & Ald 204.
(*g*) *Wills* v. *Noott*, 4 Tyr. 726.
(*h*) 1 Camp. 407.
(*i*) 4 Camp. 115.
(*k*) 2 C. & P. 559; 6 B. & C. 433.

An instrument, in the form of a bill, drawn by a company, or a branch, at one place, upon the same company at another place, is, in effect, a promissory note, and may be declared upon accordingly

In *Miller* v. *Thompson* (*l*), the plaintiff declared on a promissory note, which was as follows, *viz.* :—

"London Trades Joint-stock Banking Company,
Dorking, Surrey, 24th August, 1839.

Six months after date, pay, without acceptance, to the order of *J. C. F.* 100*l.*, value received. For the Directors,
T. N., Manager.

To the London Trades Joint-stock Banking Company,
33, Gracechurch Street, London."

The Court considered this to be, virtually, a note; it was drawn by one of several partners, at one place, purporting that a sum of money shall be paid by the partnership, at another; there was an absence of two parties, which would be requisite to constitute a bill, and the only alternative was, that it was a note.

See also *Dickinson* v. *Valpy* (*m*), where a bill drawn by a mining company at Redruth, upon the same company in London, was held to be, in effect, a promissory note.

Questions of this description can scarcely have any reference to stamp duties, the amount of duty being the same, at present, in the case either of a note or a bill; should there be any variance, the stamp would, of course, govern the election.

As to what constitutes a bill or note.

Although there are certain essentials to a bill or note, no particular form of words is necessary to constitute an instrument of either kind; the question, therefore, first in order, on this part of the Stamp Act, in reference to an unstamped writing, is, whether or not it is a bill of exchange, or a promissory note, either according to the laws relating to such instruments, or, as declared to be, for the purposes of the duty, by the Stamp Act; for, by the 48th Geo. III. c 149, and, again, by the 55th Geo III. c. 184, certain instruments, not, at law, bills of exchange, or promissory notes, are made subject to duty, as such.—See the TABLE.

It is obvious, that more than ordinary care should be exercised in determining this point; the instrument, if it be chargeable as a bill or note, being, from its inception, wholly and irremediably valueless, if it be not written on the stamp applicable to it. With

(*l*) 1 Dow. N. S. 199. (*m*) 5 Man. & R. 126.

the view of assisting the judgment in arriving at a proper conclusion, all the cases upon the subject have been selected and arranged.

BILLS. "Mr. *Nelson* will much oblige Mr. *Webb* by paying *J. Ruff*, or order, twenty guineas, on his account." This was held to be a bill, and was rejected for want of a stamp (*n*).

But in an action for money paid on the following order, written by the defendant: "Mr. *L.*, please to let the bearer have 7*l.*, and place it to my account, and you will oblige, *R. S.*;" which was given to a person to whom the defendant was indebted for work done, Lord *Tenterden* thought that the order did not require a stamp; the paper did not purport to be a demand, made by a party having a right to call on the other; the fair meaning was, "you will oblige me by doing so" (*o*). It would appear that there was other evidence to sustain the case, as his Lordship observed; perhaps, therefore, but little reliance should be placed on the opinion thus given, at *nisi prius*.

A creditor delivered his account against a debtor to third parties, and, at the foot, wrote and signed the following order: "Mr. *S.*, please to pay the above to Messrs. *Oliver and Son*, 7, Lawrence Lane, and oblige, yours, respectfully." It was objected that this was a bill, and required a stamp, but on evidence given that *Oliver and Son*, to whom it was delivered, were merely accountants, and agents of the creditor, having no interest in the matter, the objection was overruled by Mr. Justice *Maule*, who was of opinion that this was not a bill, nor anything like one (*p*).

Russell v. *Powell* (*q*) was an action for the recovery of 50*l.* agreed to be paid by the defendant to the plaintiff, out of a sum of 250*l.*, ordered by the Vice-Chancellor, in a Chancery suit, to be paid by the defendants in that suit, (executors of *Thos. Harrison*,) to such person as the defendant *Powell*, and one *John Mynn*, should jointly direct. In support of the issue raised on one of the pleas, the plaintiff tendered in evidence the following document, *viz.*:—"To the executors of the late *Thos Harrison*, deceased—*Powell* v. *Norwood*. We do hereby authorize and require you to pay to Mr. *George Powell*, or his order, the sum of 250*l.*, being the amount directed by the order of the 29th July last to be paid to our order. We, are, gentlemen, your very obedient servants, *John Mynn*." It was objected to, for want of being stamped as a bill of exchange,

(*n*) *Ruff* v. *Webb*, 1 Esp. 129.

(*o*) *Little* v. *Slackford*, Moo. & Mal. 171.

(*p*) *Norris* v. *Solomon*, 2 M. & Rob. 266.

(*q*) 14 L. J. R. (N. S.) Exch. 269; 14 M. & W. 418.

but it was admitted. On a rule *nisi* Mr. Baron *Parke* said, he would give no opinion as to what the plaintiff's situation would be, if the instrument were in the hands of a third party for value; but he was disposed to think, there might be cases in which it would require a stamp; the issue, however, did not make it important to prove a regular order, for an incomplete one would suffice. In the state in which it was tendered, his Lordship thought it was not a bill of exchange. He did not say, that if the parties making it, had allowed *Powell* to indorse it over, for value, they would not have been liable upon it. It might, also, be objected, that the defendant was not bound to sign any but a stamped instrument, lest he should be subjected to a penalty; but that objection was not taken. On the whole, his Lordship thought, that the instrument was properly received, without a stamp. Mr. Baron *Alderson* and Mr. Baron *Platt* were of the same opinion; looking upon the document as a mere warrant for the payment of money under the order of the Court of Chancery. Mr. Baron *Rolfe* differed: if *Powell* and *Mynn* had merely asked the executors to pay the amount, the request would not have required a stamp, or it would not have been an order, delivered to the payee. But, in this case, there were parties upon whom a bill might be drawn, and competent parties to draw it upon them; and the question was, whether the document was not a bill of exchange. It seemed to his Lordship to have all the characteristics of a bill of exchange; the words "*Powell* v. *Norwood*" were mere surplusage, and did not affect the question; it was not signed by *Powell*, but that was immaterial, as he was to have the money. True, it turned out to be an imperfect instrument, but that was not important, as it did not appear upon the face of it what parties were to sign it.

It would be very desirable to reconcile the opinions of all these learned authorities, as to the character of the instrument in question; there is, perhaps, no real difference between those of Mr. Baron *Parke*, and Mr. Baron *Rolfe*, upon this point; the latter speaks, more particularly, of the instrument in reference to the terms of it, without regard to its operation as an effective writing; the former refers to its efficiency, as an active instrument; both agree in this, that, in point of form, it was a bill of exchange. The opinions of the other learned Barons are not so satisfactorily disposed of; it is impossible to say how far their Lordships would have carried their views of a mere warrant for payment of money.

General description of instruments

Instruments are charged with stamp duties, as inland bills of exchange, by the following general descriptions, *viz.* :—

charged with stamp duty on bills.

1st. BILLS OF EXCHANGE, DRAFTS OR ORDERS, *to the bearer*, or *to order*.

2nd. BILLS OF EXCHANGE, DRAFTS OR ORDERS, *not* made payable *to the bearer, or to order*, if the same be *delivered to the payee, or some person on his behalf.*

both of which descriptions are extended to the following, *viz.* :—

BILLS, drafts or orders, for the payment of money by instalments.

DRAFTS, or orders for payment of money by bills or notes, or for the delivery of any such bills or notes.

BILLS, drafts or orders, for payment out of any particular fund, which may, or may not be available, or upon any condition, or contingency, which may, or may not be performed, or happen.

To which are added ;—RECEIPTS, which shall entitle, or be intended to entitle the person paying the money, or the bearer, to receive the like sum from a third person.

Thus it will be seen, that the duties are not confined to bills of exchange, properly so called, but extend to all writings, which shall have the effect of a bill of exchange, whether they, in terms, direct the payment of money or not ; and the Judges have carried out the intention of the legislature by holding, that a direction to a third person, to credit a party with a certain sum of money, is within the charge of duty, where the object is payment.

Orders of credit.

Post office orders.

What is known as a Post Office order, which may be obtained at the Post Office in any place, for payment of a sum not exceeding 5*l.* at another office, is in the following form, *viz.* :—

"No. —— £— Post Office, ——

Credit the person named in my letter of advice, the sum of ————, and debit the same to this office.

(Signed)————————

Postmaster.

"To the Post Office, London."

The object of this order is the remittance of money to the person designated, at the place named; and, on an indictment for stealing an order of this kind, a question was raised whether it was an order for the payment of money ; a case was stated for the opinion of the Judges, who held that it was such an order; the designation or address of the order was sufficient authority to the persons who carried on business at the Post Office. It was objected, that if it was an order for the payment of money, it required to be stamped,

and, without a stamp, was valueless; to this it was answered, (as appears from the judgment,) that although it was a money order, it was not a money order within the meaning of the Stamp Act, but a bill of exchange for the payment of money within the meaning of the Act; for no stamp was imposed, except upon bills of exchange, or orders for the payment of money, payable to the person named in the order, or bearer, or except delivered to the payee, or some person named on his behalf. Some of their Lordships thought, that, in this case, the instrument could not be considered as so delivered; they were all, however, of opinion that it was not necessary to decide the point; but, this being the usage of the Post Office, they were of opinion that it was sanctioned and legalized by the 3 & 4 Vict. c. 96; which provided that the mode of remitting money orders, which then prevailed, should have continuance, so long as the Treasury should think fit, and that this was a good money order, notwithstanding the want of a stamp (*r*).

There is some obscurity in the judgment, as it is thus reported; this, however, is clear, that but for the statute referred to, which legalized the then prevailing practice of issuing these unstamped money orders, every such order would be liable to stamp duty as a "bill of exchange, draft, or order for the payment of money." The question as to its being delivered to the payee or some person on his behalf, arose from the special circumstances of the particular case, not from any doubt on the general practice.

Orders for payment of money on contingencies.

The following are cases relating to bills payable out of an uncertain fund, or on a contingency, decided prior to the enactment declaring that such instruments shall be deemed bills within the Stamp Acts:—

In *Jenny* v. *Herle* (*s*), a request to a party, to pay a sum of money out of the moneys in his hands belonging to the proprietors of the Devonshire mines, being part of the consideration-money for the purchase of the manor of *B.*, was held not to be a bill of exchange. In this case, reference was made to that of *Josselyn* v. *L'Acier* (*t*), in which it was held, that an order by an officer to his agent, to pay 7*l.* a month out of his growing subsistence, was not a bill.

But a writing, requesting the defendant, one month after date, to pay to the plaintiff, or order, 9*l.* 10*s.*, "as my quarterly half-pay, to be due from the 24th June to 27th September next, by advance," was held to be a good bill of exchange, the quarterly

(*r*) *Reg.* v. *Gilchrist*, 1 Car. & M. 224.

(*s*) 1 Stra. 591; 11 Mod. 384.

(*t*) 10 Mod. 294.

half-pay being a certain fund, which was not so in the previous cases (*u*).

"Messrs. *G. & Co.*,—Pray pay Mr. *R. B.*, one month after date, 200*l.*, on account of freight of the *Veele Galley, Edward Champion,* and this order shall be your sufficient discharge for the same" (*x*), was ruled not to be a good bill of exchange. And so, also, was the following, *viz.*: "Seven weeks after date, please to pay to Miss *R.* 32*l.* 17*s.* out of *W. S.'s* money, as soon as you receive it" (*y*). Lord *De Grey* in this case observed, that a bill must carry with it a personal, and certain credit, given to the drawer; not be confined to credit upon any thing, or fund; and he referred to *M'Leod* v. *Snee;* and to *Andrew* v. *Franklin* (*z*), in which it was determined, that a promise to pay within two months after a ship was paid off, was not uncertain, the paying off of a ship being a thing of a public nature, and morally certain.

The propriety of describing such an event, or a half-pay fund, as morally certain, may, perhaps, be considered questionable.

The foregoing were cases not only prior to the enactment alluded to, but before any stamp duties were payable on bills of exchange. The next, although after the duties were imposed, arose before the special provision was enacted.

In *Wilks* v. *Adcock* (*a*) a bill, or order, requiring the defendant to pay a certain sum "out of the moneys which he might receive of *S. B.*, when received, with lawful interest," was decided not to be a bill of exchange.

In *Kingston* v. *Long* (*b*), which was an action by an indorsee against the acceptor, an order, importing to be payable, provided the terms mentioned in certain letters, written by the drawer, were complied with, was held not to be a bill when drawn, and to be incapable of becoming so. *Smith* v. *Boheme* (*c*) was referred to, where a promise to pay a sum of money, or surrender the body of *S. B.*, was decided not to be a promissory note.

The following cases are subsequent to the provision in question:—

"Please to pay Mr. *S. E.* from and out of the produce arising from the sale of my household goods, and furniture and other effects, at the Blue Posts Inn, Broad Street, Portsmouth, which

(*u*) *Macleod* v. *Snee*, 2 Stra. 762; 11 Mod. 400.

(*x*) *Bunbury* v. *Lisset*, 2 Stra. 1211.

(*y*) *Dawkes* v. *Lord Delorane*, 3 Wils. 207.

(*z*) 1 Stra. 24.

(*a*) 8 T. R. 27.

(*b*) Bayl. on Bills, 4 edit. 13.

(*c*) 3 Lord Raym. 67.

you are about to sell by auction, the sum of 200*l.*, and interest thereon from the 23rd June last, due to Mr. *E.* from me, on a warrant of attorney; and also the further sum of 110*l.* 0*s.* 9*d.*, due to the said *S. E.* from me, for goods sold, for which said several sums of money the receipt of the said *S. E.* shall be your discharge." This was held to be liable as a bill of exchange, under the 55 Geo. III. c. 184 (*d*).

Firbank v. *Bell* (*e*) was an action of assumpsit, by the assignees of a bankrupt (*Mann*), to recover the produce of a cargo of mahogany; and the following paper was offered in evidence, *viz.*: "Messrs. *Bell & Hendy*—When the mahogany, per *Regent*, is sold, you will please to pay over to Messrs. *P. H. & W.* 1500*l.* in such bills as you receive from the sale.—*Samuel Mann.*" A copy of this was forwarded by *P. & Co.* in a letter to *B. & H.*, who acknowledged the same, and promised to attend to it; so that the order must have been delivered to the payees, *P. & Co.*; it was, therefore, held to be chargeable as a bill of exchange.

N.B.—Drafts or orders, delivered to the payee, for the payment of money by bill or note, or for the delivery of any such bill or note, in satisfaction of any sum of money, are, by the 55 G. III. c. 184, as before observed, directed to be deemed bills, drafts or orders, within the meaning of the Act.

"Messrs. *S. & H.*, we request that you will pay to Messrs. *H. C. & Son*, or their order, out of the first proceeds that become due of our stock of gunpowder, now in your charge, 600*l.*, and charge the same to our account." It was held that this, although not a bill of exchange at law, stood on the same footing as a bill, under the 55 Geo. III. c. 184; and could not, by reference to the 31 Geo. III. c. 25, s. 19, be lawfully stamped after it was written; and, therefore, although it had been stamped as an agreement on payment of a penalty, it could not be read (*f*).

B., in the country, wrote to *S.*, in London, as follows, *viz.*: "Mr. *R S.* Please to pay to *N.*, on account of the assignees of *O. & Co.*, the proceeds of a shipment of 12 bales of goods, value of about £2000, consigned by me to you;" whereupon *S.* wrote to *N.* as follows:—"Shipped on board the *Sarah*, for the account of *B.*, 12 bales of woollen cloths, value as per invoice, 1640*l.* 17*s.* 10*d.*, to be sold, &c. In pursuance of the said order of *B.*, I do hereby consent and engage to pay over the full amount of the net pro-

(*d*) *Emly* v. *Collins*, 6 Maule & S. 144.

(*e*) 1 B. & Ald. 36.

(*f*) *Butts* v. *Swann*, 4 Moore, 485; 2 B. & B. 78.

ceeds, &c., as I may from time to time receive the same, unto the assignees without delay."

On a case from the Vice-Chancellor, the Court certified, that neither of the above instruments required such a stamp as the Acts impose on bills, drafts or orders for the payment of money. [Promissory notes should have been added, for the second paper, if any thing, was a note] (*g*). One of the grounds of this decision was, that no definite sum was mentioned.

H. & I. being indebted to *R. & Co.*, and having a large credit on *O. & Co.*, wrote to the latter as follows, *viz*:—

"Gent —Your letter to Messrs. *R. & Co.* of the 23rd instant, inclosed in yours of the same date, we did not present to them, thinking it would not be satisfactory, and having returned the same to you, we now authorize you to pay to Messrs. *R. & Co.*, (having revoked the former order in their favour,) after you have paid yourselves the balance we owe you, from the net proceeds of our shipments to your foreign establishments to the present date, one half of the remainder of the proceeds of said shipments, provided the same shall not exceed the sum of £5000."

The Court held this not to be liable as a bill of exchange, it being sent to the persons to whom it was addressed. Here, also, no amount was specified (*h*).

The consignor of a cargo of bricks, &c., gave the following authority to the wharfinger, to pay the freight, *viz.*:—

"I hereby authorize Mr. *J. W* to sell the bricks or tiles landed out of the *Hope*, and thereout of the proceeds to pay Capt. *R. H.*, the remainder of his freight, 24*l.* 7*s.* 6*d.*" This was held, by *Tindal*, C. J., not to be an order for payment of money requiring a stamp (*i*).

A question which had been raised on the trial in *Crowfoot* v. *Gurney* (*k*), of the liability to stamp duty, of an order, sent to the person to whom it was addressed, stating that the writer would feel obliged by his paying to certain other persons, the balance due to him for building a chapel, &c., was, on reference to the opinion in *Jones* v. *Simpson*, abandoned.

The following order, written by a mortgagor, and delivered to the mortgagees' solicitors, addressed to the tenant of the former, was held by the Vice-Chancellor of England to be liable to stamp

(*g*) *Jones* v. *Simpson*, 2 B. & C. 318; 3 D. & R 545.

(*h*) *Hutchinson* v. *Heyworth*, 9 A. & E. 375; 1 P. & D. 266; W. W. & H 730.

(*i*) *Humphreys* v. *Briant*, 4 C. & P. 157.

(*k*) 2 Moore & Scott, 473.

duty, as an order for the payment of money falling within the precise words of the Stamp Act: "Please to remit to Messrs. *H. D. & T.*, the sum of 700*l.*, and charge it in account with me in settling for the present year's tithes of the prebend of L." (*l*).

So, also, was the following, by Vice-Chancellor *Wigram*, the same having been delivered to the payee, *viz.*: "27 Feb., 1844, Messrs. *M. & Co.* Gentlemen—Out of any balance which may be due to me, after final arrangement of the account, I will thank you to pay to *G. P.*, Esq., 1977*l.* I remain, &c., *I. M.*" (*m*).

A draft on persons in *India*, payable 30 days after a ship shall arrive, is not a valid bill of exchange (*n*).

An order on a contingency cannot be declared on as a bill, though accepted.

An order for the payment of money, on a contingency, cannot be declared upon as a bill of exchange, though accepted by the drawee; and, if a conditional acceptance be declared upon, it must be set forth specially, with an averment, that the condition has been performed (*o*). In the case referred to the order was written at *Constantinople*, therefore no question arose on the Stamp Act.

The word "pounds" omitted.

A bill for "twenty-five seventeen shillings and three pence," was held by *Tindal*, C. J., to mean twenty-five *pounds*, it could mean nothing else (*p*).

Checks.

What is, popularly, termed a banker's check, is, it is scarcely necessary to observe, strictly, a bill of exchange (*q*); it falls within the description of bills in the first class contained in the schedule to the 55 Geo. III. c. 184. The legislature has, however, thought proper to exempt such instruments from stamp duty, but, in order to entitle them to the exemption, several requisites must be attended to; the omission of any one of which not only invalidates the document, but involves the drawer, the receiver, and the banker who pays it, in serious penalties and disabilities (*r*); the offence of attempting to evade the duty, "under colour of the exemption in favour of drafts or orders upon bankers," being deemed one of a more grievous nature than that of simply drawing a bill on unstamped paper, and attended, therefore, with more serious consequences.

The requisites are as follow, *viz.*:

1. The draft must be payable to bearer on demand.

(*l*) *Lord Braybrook* v. *Meredith*, 12 L. J. R. (N. S.) V. C. E. 289; 7 Jur. 144.

(*m*) *Parsons* v. *Middleton*, 6 Hare, 261.

(*n*) *Palmer* v. *Pratt*, 2 Bing. 185.

(*o*) *Ralli* v. *Sarell*, 1 D. & R. 33.

(*p*) *Phipps* v. *Tanner*, 5 C. & P. 488.

(*q*) *Webb* v. *Inwards*, 5 M. G. & S. 483.

(*r*) 55 Geo. III. c. 184, s. 13.

2. It must be drawn upon a banker, or person acting as a banker, residing within fifteen miles of the place where it is issued.

3. The place where it is issued must be truly specified in it.

4. It must bear date on or before the day on which it is issued.

A further provision is, that it shall not direct the payment to be made by bills or notes.

There is good reason for knowing that the most common evasion of the above regulations, is, the issuing of checks on bankers residing beyond the prescribed distance, and which irregularity, generally, involves, also, a breach of the third requirement above mentioned; but that most frequently brought under the notice of the Stamp Office, is *post-dating;* the sole object of which, is to make the draft answer the purpose of a bill of exchange after date, and to constitute it a security for money, instead of being the means of an actual immediate payment, out of the drawer's money deposited at his banker's.

Check at sight.

A check payable at sight, instead of on demand, is not within the description of drafts exempted (*s*).

Not drawn on a banker.

In *assumpsit* by an executor, against the executors of another deceased person, for money, &c., the defendants pleaded a set-off, and tendered in evidence an unstamped draft on the plaintiff's testator, a bricklayer, with a memorandum at the foot that the defendant's testator had paid the draft for the other; the object of giving the paper in evidence being, to show such payment, by means of the memorandum; but the Court held, that to read the memorandum would be to give effect to the draft, which was not valid, not being drawn upon a person acting as a banker, as the defendants had misisted (*t*).

A banker need not keep open shop.

It is not essential, however, to constitute a banker, that he should keep an open shop. An army agent may be made bankrupt as a banker, although not keeping open shop (*u*).

Drawn beyond the proper distance.

In an action for usury the declaration stated, that the defendant forbore to *W. & L.*, 242*l.* 7*s.* 0*d.* from the 21st April, 1807, to the 5th November following. It appeared that *W. & L.*, on the 21st April, received from the defendant, then at *Frome*, cash notes for the above sum, including a check for 26*l.* 8*s.* 0*d.* (unstamped), drawn by Lord *Cork* upon *Hammersley & Co.;* on the same

(*s*) *I'Anson* v. *Thomas*, Buyl. 42. (*t*) *Castleman* v. *Ray*, 2 B. & P. 383.
(*u*) *Ex parte Wilson*, 1 Atk. 218.

day they received cash for all, except this check, but for the amount of which they got credit at their bankers on the 21st April, although the check was not paid till the following day; it was objected that this check, drawn at a distance, was void in law, and that there could be no forbearance till the 22nd; and it was so held by Lord *Ellenborough*, who observed, that the check was a mere nullity, if lost it would have been the loss of a straw (*x*).

Place not truly stated.

A check is invalid for want of stating, truly, the place of issuing, although the actual place be within the prescribed distance. A check was dated Llanelly, but was drawn at the party's house, called Trimsaran, four miles distant, upon bankers at Llanelly, and it was held to be void; and that, therefore, presentment upon the bankers (who had stopped payment) was not necessary (*y*).

In *Strickland* v. *Mansfield* (*z*) a question arose, whether the words "Dorchester Old Bank," printed at the top of a check, sufficiently indicated a place of issuing, within the terms of the exemption. The fact, no doubt, was, that these words were used to designate the place of payment, the check being a printed form supplied by the bankers for the use of their customers; but inasmuch as they would sufficiently describe the place of drawing, if that place happened to be Dorchester, and as the contrary was not shown, the check was held to be within the exemption.

But the following was determined, in *Bobart* v. *Hicks* (*a*), not to be within the exemption; the place mentioned not appearing to be that at which it was drawn; *viz.*: "Oct. 12, 1847. Messrs. *Knapp & Co.*, Bankers, Abingdon. Pay to Mr. *Hicks*, or bearer, 117*l.* 17*s.* 0*d.* *Thomas Sharps.*"

The delivery of a check on which the place where it is drawn is not stated, does not amount to payment; and therefore, where a check with such omission, intended to be in discharge of the purchase-money of an estate, was not presented until after the banker had stopped payment, the vendor was held to have a lien on the estate for the amount (*b*).

Post dated.

A post-dated check, being void *ab initio*, is, altogether, inadmissible in evidence, and will not, therefore, be permitted to be read in support of a count for money paid (*c*).

(*x*) *Borrodaile* v. *Middleton*, 2 Camp. 53.

(*y*) *Waters* v. *Brogden*, 1 Y. & J. 457.

(*z*) 10 Jurist, 287; 1 A. & E. (N. S.) 675.

(*a*) 12 Jur. 923; 18 L. J. R. (N. S.) Exch. 33.

(*b*) *Bond* v. *Warden*, 14 L. J. R. (N. S.) Chan. 154; 9 Jurist, 198; 4 Law Times, 351.

(*c*) *Serle* v. *Norton*, 9 M. & W. 309.

In *Allen* v. *Keeves* (*d*), a post-dated check was attempted to be made available, by showing that it was not intended to be used before the day of the date, but it could not be admitted. It may be remarked, that in scarcely any instance, is a post-dated check intended to be made use of before the date; the object in delivering such an instrument can only be, to create a security till the day on which it is available; it being, in effect, precisely the same as a bill after date.

Martin v. *Morgan* (*e*) was an action by the bankers of the drawer, to recover money paid to the defendants on a post-dated check. When the check was presented for payment the drawer had no balance in his bankers' hands; but, in the expectation of receiving funds the same day, and in ignorance of any irregularity, the bankers paid the check, the defendants, at the same time, not only knowing that the check was post-dated, but that the bankers' expectation of receiving funds would be disappointed. The Court held that the plaintiffs were entitled to recover, if only on the ground of paying the money on an illegal instrument; to which, in order to entitle the defendants to keep the money, the Court must give effect.

Appropriation of money to pay post-dated check.

The drawer of a post-dated check requested another to discount it, but the latter first applied to the banker to know if he would pay it; who said it would be honoured, as he owed the drawer 200*l*. Held, that the check could not be given in evidence, but that the banker had thus appropriated so much of the debt as he owed to the drawer. He was allowed to prove that he owed less than the amount of the check (*f*).

The defendant, in *Whitwell* v. *Bennett* (*g*), accepted a bill, expecting to receive money on account of the drawer; and he gave the plaintiff a check, post-dated to the time when he expected to receive the money; but, not receiving the money, he stopped the payment of the check. The check was, of course, void; and the plaintiff was prevented from recovering on the acceptance, by reason of a mistake in the count of the declaration relating to it; but he contended, in reference to the other counts, that the defendant must be considered to have appropriated money of the drawer towards the bill, and be presumed to have received money of the drawer, unless he proved the contrary. The Court, however,

(*d*) 1 East, 435.
(*e*) 3 Moore, 635.
(*f*) *Arderne* v. *Rowney*, 5 Esp. 255.
(*g*) 3 B. & P. 559.

held that there was not sufficient to support any such presumption.

Money not allowed to the banker in account.

As regards the banker, knowingly, paying checks, not drawn in conformity with the prescribed regulations, a serious consideration is, that the money may be disallowed, in account; that, in fact, no demand arises against any person, for any money advanced or paid on any such check; it is not, merely, that the check is not available as a security, or as evidence of payment; but no right exists, in law, to be repaid the money. In *Swan* v. *The Bank of Scotland* (*h*), in the House of Lords, a surety in a bond given to secure advances made by the bank, was held not to be liable to pay money advanced on checks drawn beyond the distance allowed. See the observations of the Lord-Chancellor, in delivering the judgment in this case, as to the non-existence of any claim against the principal or the surety, under such circumstances. But in order to affect the banker with this disability, as well as to render him liable to the penalty imposed for paying a check, not drawn in conformity with the exemption, the draft itself must come within the description of instrument in the exemption, under colour of which it is drawn; and the money, to be disallowed, must have been paid on the check; thus, the check must be drawn, and *issued*, and that before the money was advanced. In a case in the Court of Review, the bankrupt had credit on *a bank at Norwich;* he obtained his advances at *Foulsham*, sixteen miles from *Norwich*, from the agent of the bank there, with whom he settled his account weekly, giving him a check on the bank, dated the following day, and in which was printed the word "*Norwich*," as the place of issuing, for the amount which had been advanced to him during the preceding week. The Court considered these checks merely as vouchers between the agent and his principals, and as wanting the character of *issuing* to come within the clause relating to checks on bankers. It was observed by the Court, however, that although there might be no intention to defeat the object of the legislature, yet, if the transaction came within the words of the statute, it must be held to be illegal (*i*). It was also held, in the same case, that the bankers were only affected, where they were aware of the irregularity attending the check.

The checks must be issued and the irregularity known, or the banker will not be affected.

A check, invalid as not within the exemption, and not being

A void check is not the sub-

(*h*) 10 Bligh, N. R. 627; 1 Dea. 746; 2 Mont. & Ay. 656; *Swan* v. *Blair*, 3 Clark. & Fin. 610.

(*i*) *Ex parte Bignold, in re Brereton*, 1 Dea. 712; 2 Mont. & Ay. 633.

ject of an indictment for larceny.

NOTES.

stamped as a bill of exchange, is not a valuable security within the meaning of the 7 & 8 Geo. IV. c. 29, s. 5, and is not, therefore, the subject of an indictment for larceny (*k*).

No particular form of words is requisite to constitute a promissory note; nor is it essential that it should express "value received" (*l*). But the stating of a special consideration does not destroy the efficacy of the writing, as a note, provided such consideration be for something already done

"I promise to pay *M. A. D.*, or bearer, on demand, the sum of 16*l.* at sight, by giving up clothes and papers, &c.," was held to be a promissory note for value received (*m*). On the trial, it was contended that the note was given on condition that the things should be given up; the learned Judge said, if the jury thought so, their verdict should be for the defendant. This was the fact in *Jarvis* v. *Wilkins* (*n*), in which an undertaking to pay a certain sum, "for a suit ordered by *D. P.*," was held not to be a note.

"On demand I promise to pay *W. S.* the sum of 50*l.*, in consideration of his foregoing, and forbearing an action at law for damages, ascertained by consent to amount to that sum, by reason of the injuries sustained by his wife in respect of my liability for the non-repair of a footway." This was held to be a note upon an executed and completed consideration, and not an agreement; all that was stated, as a reason for granting the note, was executed, past, and done; the foregoing, and forbearing of an action at law, having already taken place (*o*).

But, in *Drury* v. *Macaulay* (*p*), a similar consideration was treated as prospective, and the promise, therefore, contingent. The document was as follows, *viz.*: "*Drury* v. *Vaughan*. In consideration of *W. D.* not taking any further proceedings in the above action, I do hereby undertake that I will pay unto the said *W. D.* 3*l.* 5*s.* every quarter of a year, from this day until the whole principal money, now due from Messrs. *J.* and *T. V.* to Mr. *D.*, 26*l.* 1*s.*, with lawful interest for the same, from the date hereof, be fully paid and satisfied; and the first of such quarterly payments to become due on the 30th October next. It is under-

(*k*) *Rex* v. *Yates*, Carrington's Crim. Law, 3rd edit. 373.

(*l*) *White* v. *Ledwick*, Bayl. on Bills, 34.

(*m*) *Dixon* v. *Nuttall*, 6 C. & P. 320; 1 C. M. & R. 307; 4 Tyr. 1013.

(*n*) 7 M. & W. 410.

(*o*) *Shenton* v. *James*, 5 A. & E. (N. S.) 199; 7 Jurist, 1130; *Shelton* v. *James*, 1 Car. & K. 136; 13 L. J R. (N. S) Q. B. 90.

(*p*) 16 L. J. R. (N. S.) Exch. 31; 16 M. & W. 146.

stood that this undertaking is not to be a release or a discharge of the note, signed by Mr. *J. V.* and Mr. *T. V.*, to the said Mr. *W. D.*, on the 9th March, 1840, but is an additional security for the above-mentioned amount, now due on such note, with interest." This was held not to be a promissory note; it was only an additional security for the balance due upon the note referred to, the money secured by it not being payable at all events; Mr. Baron *Alderson* likewise observing, that if the plaintiff did not forbear proceedings against the original debtors, no money was to be paid.

"I do acknowledge that Sir *A. C.* has delivered me all the bonds and notes for which 400*l.* were paid him on account of Col. *S.*, and that Sir *A.* delivered me Major *G.'s* receipt and bill on me for 10*l.*; which 10*l.* and 15*l.* 5*s.*, balance due to Sir *A.*, I am still indebted, and do promise to pay." This was held to be a note within the statute of Anne (*q*).

"Gentlemen,—I have received the imperfect books, which, together with the cash overpaid on the subsequent settlement of your account, amounts to 80*l.* 7*s.* which sum I will pay you within two years from this date. I am, &c." This was held to be a promissory note (*r*). And so, likewise, was the following; "Received of *A. B.* 150*l.*, which I promise to pay on demand with interest" (*s*).

In an action of debt, the following paper was held by Mr. Justice *Williams*, to be a promissory note: "*John Mason* borrowed of *Mary Ann Mason*, his sister, the sum of 14*l.* in cash, as per loan, in promise of payment of which I am truly thankful for, and shall never be forgotten by me, *John Mason*, your affectionate brother" (*t*). His Lordship observed, that the defendant impliedly undertook to pay the money; the terms of gratitude were only a redundancy of expression, and did not interfere with the operation.

"Memorandum, that I, *Benjamin Payne*, had 5*l.* 5*s.* for one month of my mother and *Shrivell*, from this date to be paid to her by me." Mr. Justice *Coleridge* was of opinion, that the authorities sufficiently decided that a stamp ought to have been impressed on this instrument (*u*).

(*q*) *Chadwick* v. *Allen*, 2 Stra. 706.

(*r*) *Wheatley* v. *Williams*, 1 M. & W. 533; Tyr. & G. 1043; 2 Gale, 140.

(*s*) *Ashby* v. *Ashby*, Moore & P. 186; *Green* v. *Davis*, 1 C. & P. 451; 4 B. & C. 235.

(*t*) *Ellis* v. *Mason*, 7 Dowl. 598; 8 L. J. R. (N. S.) Q. B. 196.

(*u*) *Shrivell* v. *Payne*, 8 Dowl. 441; 4 Jurist, 485.

In *Williamson* v. *Bennett* (*x*), the following document was offered in evidence, *viz.*: "Borrowed and received of *J. & J. Williamson*, [the plaintiffs] the sum of 200*l.* in three drafts by *W. & B. Williamson*, dated as under, payable to us, [the defendants] on *J. & J. Williamson*, which we promise to pay unto the said *J. & J. Williamson*, with interest, as witness our hands." Lord *Ellenborough* held it to be a special agreement, and not a promissory note; the plaintiffs were to advance money to the defendants, for which this was to be a security, binding on the defendants, after the money had been received; they did not promise to pay 200*l.*, but to repay the 200*l.* they were about to borrow This distinction of his Lordship is, scarcely, satisfactory.

A document, stating that the party did bargain and agree with his uncle *W. E.*, to give him 5*l.* for a cart, for the use of his father, and did thereby promise and agree to pay him, the said *W E.*, without fail in three weeks; was considered to be an agreement; the Judge, (*Richardson*,) observing, that if this was to be deemed a note, then every written memorandum for the purchase of goods, where payment was stipulated for at a future day, would be a promissory note (*y*).

"I, *R. J. M.*, owe Mrs. *E.*, the sum of 6*l.* which is to be paid by instalments, for rent," was determined by *Patteson*, J., not to be a promissory note, no time of payment of the instalments being specified (*z*).

"My dear Sir,—You have given me this day 280*l.* which I undertake to return to you next week. This money you have given me on behalf of Sir *G. G.* out of the trust money of Miss *G.* which you hold for her." This was held by the Court of Queen's Bench in Ireland not to be a note; the concluding words had some meaning, although it was difficult to explain them; but there was no meaning which did not carry them beyond a note (*a*).

"Feb. 1831. *Wm. W.* lent to *J. R.* 19*l.* 19*s.* 11*d.*, to receive five *per cent.* for the same, to pay on demand to the said *W. W.* giving *J. R.* six months' notice of the same;" Mr. Justice *Cresswell* thought this was a promissory note (*b*).

"Memorandum.—Mr. *S.* has this day deposited with me 500*l.* on the sale of 10,300*l.* £3 *per cent.* Spanish, to be returned on

(*x*) 2 Camp. 417.
(*y*) *Ellis* v. *Ellis*, Gow, 216.
(*z*) *Moffatt* v. *Edwards*, 1 Carr. & M. 16.
(*a*) *Hamilton* v. *Goold*, 1 Irish Law Rep. 171.
(*b*) *Walker* v *Roberts*, 1 Carr. & M. 590.

demand," was held not to be a promissory note, but a memorandum of the deposit of money to be returned (*c*).

"We owe *G. G.* 12*l.* 11*s.* 7*d.* which we will pay on demand," was held by Mr. Justice *Ball*, in Ireland, to be a note (*d*).

Promise to account.

A note, whereby a person promised to be accountable to *A. B.*, or order, for 100*l.*, value received, was decided to be a promissory note (*e*). As reported in *Mod.*, the form of the note is thus, "I promise to account with *T. S.*, or his order, for 50*l.*, value received."

But, in a much later case, the word "accountable" was not deemed tantamount to a promise to pay :—

"I have received the sum of 20*l.* which I have borrowed of you, and I have to be accountable for the said sum with legal interest." The Court held, that, without referring to any of the decisions, this case might be determined upon the words of the Stamp Act. The instrument was not a note in its terms, nor did it come within any of the descriptions of instruments charged as such; it could only be classed with instruments described as receipts for money deposited with bankers, containing an agreement importing that interest should be paid; but it was not given for money so deposited, and the word "accountable" might apply to a set-off upon mercantile transactions, or otherwise (*f*).

A material distinction will be observed between this case and *Morris* v. *Lee;* the party, in the latter case, promising to account "to order."

"Received from *C.* 38*l.* for which I will account on demand," was held by the Court of Exchequer, in Ireland, not to be liable to any duty (*g*).

"Borrowed of Mr. *J. W.* the sum of 200*l.* to account for on behalf of the Alliance Club at ——— months notice, if required," was, likewise, held not to be a promissory note chargeable with duty (*h*). And so was a document in the same terms, but with the blank filled up with the word "two" (*i*).

Promise to pay on account of another.

In *Garnet* v. *Clarke* (*k*), *Holt*, C. J., said, a promise "to pay *J. S.*" is good; but a promise to pay "*J. S.*, upon account of *J. N.*" is not good, for that is not within the 3 & 4 Anne, c. 9.

(*c*) *Sibree* v. *Tripp*, 15 L. J. R. (N. S.) Exch. 518.

(*d*) *Dullea* v. *Emury*, 2 C. & D. 506, Cir. Rep.

(*e*) *Morris* v. *Lee*, 1 Stra. 629; 8 Mod. 362.

(*f*) *Horne* v. *Redfearn*, 4 Bing. N. C. 433; 1 Arnold, 190.

(*g*) *Carey* v. *Eccleston*, 1 C. & D.; 6 Law & Eq. Rep.

(*h*) *White* v. *North*, 18 L. J. R. (N. S.) Exch. 316.

(*i*) *Ibid.*

(*k*) 11 Mod. 226.

Notes payable on contingencies or out of contingent funds.

In considering what is, or what is not a promissory note, with reference to its being payable on a contingency, or out of a contingent fund, it should be borne in mind, that the instruments which are not promissory notes in law, by reason of any such contingency, but which are charged with duty as such, are those only for definite and certain sums less than 20*l.*, payable to bearer, or order.

A promissory note to pay within two months after such a ship is paid off, was held in *Andrew* v. *Franklin* (*l*) to be negotiable as a promissory note. On this case Lord *De Grey* observes in *Dawkes* v. *Lord De Lorane* (*m*) that the paying off of a ship was a thing of a public nature, and, morally, certain.

A note, payable six weeks after the death of the drawer's father, is a negotiable note; for there is no contingency whereby it may never become payable (*n*). And see *Evans* v. *Underwood* (*o*), where a promise to pay "*G. P.*, or order, 8*l.* upon receipt of his, the said *G. P.'s* wages, due from His Majesty's ship *Suffolk*, it being in full for his wages and prize money and short-allowance money for the said ship," appears to have been considered a promissory note.

But a promise to pay money within so many days after the drawer should marry, was held not to be a negotiable note within the statute (*p*).

A promise by a person to pay 10*l.* out of his money that should arise from his reversion of 43*l.* when sold, was held not to be a note within the statute, but was contingent. The Court observed that the object of the Act (3 & 4 Anne, c. 9) was to put notes on the same footing as bills, in every respect; it would perplex commercial transactions if paper securities were encumbered with conditions and contingencies; bills and notes stand in *in pari ratione* (*q*).

And where the plaintiff declared on a promissory note, whereby the defendant promised to pay 190*l.* on the sale or produce, immediately when sold, of the White Hart, St. Albans, and the goods, &c., averring that the house and goods were sold, it was, also, held that this could not be declared on as a note within the statute (*r*).

(*l*) 1 Stra. 24.
(*m*) P. 142, *ante*.
(*n*) *Cooke* v. *Colehan*, 2 Stra. 1217.
(*o*) 1 Wils. 262.
(*p*) *Beardesley* v. *Baldwin*, 2 Stra. 1151.
(*q*) *Carlos* v. *Fancourt*, 5 T. R. 482.
(*r*) *Hill* v *Holford*, 2 B. & P 413.

In *Haussoullier* v. *Hartsinck* (*s*), papers of the following kind were received in evidence as promissory notes.

"No. 300. Original Security Bank, London. No. 300.
35, Cornhill. this 7th day of September, 1797.
£25.

On the 19th day of November next, and after that date, on demand, we promise to pay to —, or bearer, 25*l.*, being a portion of a value as under deposited in security for the payment hereof, according to the receipt in our hands. *Hartsinck & Co.*"

The Court was clearly of opinion, that, though, as between the original parties to a transaction referred to, the payment of the notes was to be carried to a particular account, the defendants were liable on the notes, which were payable at all events, and were on proper stamps.

A woman and her husband, who had received benefits from the wife's father, gave the latter the following note, in order to render it unnecessary for him to alter his will in favour of his other daughter, *viz.*: "On demand we promise to pay Mr. *G. C.* or his order, 1200*l.*, for value received in stock of all brewing vessels, &c. this being to stand against me, the undersigned *Mary P.*, as a set-off for that sum left me in my father's will above my sister *Ann's* share." It was held not to be a note, payable at all events (*t*). And, for the same reason, a similar judgment was given in a case where two persons, (the defendants,) jointly and severally promised to pay to another, (the plaintiff,) or her order, 50*l.*, in the proportions, and on the days, &c., by way of instalments, in manner, following, *viz.*: 5*l.* on the 11th October then next, a like sum of 5*l.* on the 6th April, 1833, &c. But, nevertheless, it was thereby declared by the payee as well as the giver, that all installed payments, after the decease of the payee, should cease, and become null against his executor (*u*).

A note, reciting that the defendant had been awarded to pay 500*l.* to the representatives of *J. S.*, and that he had paid 100*l.* to *J. S.* in his lifetime; and thereby promising to pay to his representatives 400*l.* three months after his death, pursuant to the award, first deducting any interest or money *J. S.* might owe him on any account, was received in evidence as an agreement, being

(*s*) 7 T. R. 733.
(*t*) *Clarke* v. *Percival*, 2 B. & Ad. 660.
(*u*) *Worley* v. *Harrison*, 5 N. & M. 173; 1 H. & W. 426.

stamped with 20*s.*, and being insufficiently stamped as a promissory note; the deduction resting in contingency (*x*).

"I *John Corner*, promise to pay to *Absolam Ferris*, the sum of 50*l.*, with lawful interest for the same, or his order, at six months' notice. *John Corner*, or else *John Bond*."

In an action against *John Bond* this was held not to be a promissory note, by reason of the contingency, the defendant being liable only on non-payment by *Corner* (*y*).

To pay, or cause to be paid.

A promise to "pay, or cause to be paid," was held, in *Lovell* v. *Hill* (*z*), to be a promissory note, notwithstanding the alternative.

To pay, or surrender a party.

In an early case, a promise to pay a sum of money, or surrender the body of *S. B.*, was declared not to be a note (*a*).

Promise to pay when able.

"I acknowledge to owe to Mr. *J. M.* the sum of 36*l.*, which I agree to pay him as soon as my circumstances will permit me so to do," was held to be an agreement (*b*).

Note as a security for an uncertain amount.

"At twelve months after date, I promise to pay *R. F. & Co.*, 500*l.*, to be held by them as collateral security for any moneys now owing to them by *J. M*, which they may be unable to recover on realizing the securities they now hold, and others which may be placed in their hands by him," was held not to be a promissory note (*c*).

Notes in part only.

On the question whether an instrument be a promissory note or an agreement, the whole writing must be taken together, and not divided into parts, so as to constitute one portion only a note; although the addition of foreign matter, distinct from and not interfering with the promise, does not, always, destroy the leading character of the instrument, as a promissory note.

A promise to pay a specific sum, and all such other sums as, by reference to the party's books, he owes to the other, with interest, is not a promissory note, even for the sum specified (*d*).

So, a promise to pay 13*l.* on demand, with interest, "and all fines according to rule," is not a promissory note; the latter words could not be rejected as surplusage (*e*).

(*x*) *Barlow* v. *Broadhurst*, 4 Moore, 471.
(*y*) *Ferris* v. *Bond*, 4 B. & Ald. 679.
(*z*) 6 C. & P. 238.
(*a*) *Smith* v. *Boheme*, 3 Lord Raym. 67.
(*b*) *Morris* v. *Dixon*, 4 Ad. & E. 845; 6 Nev. & M. 441.
(*c*) *Robins* v. *May*, 11 Ad. & E. 213; 3 Jurist, 1188.
(*d*) *Smith* v. *Nightingale*, 2 Stark. 375.
(*e*) *Ayrey* v. *Fearnsides*, 4 M. & W. 168.

"Received, and borrowed of *T. B.* the sum of 30*l.*, which I do hereby promise to pay, with interest at the rate of 5*l. per cent.* I also promise to pay the demand of the sick club at Haworth, in part of interest, and the remaining stock and interest to be paid, on demand, to *T. B.*, his executors, administrators or assigns." This, which was stamped as an agreement, was held to have been properly received; to a certain extent it was a promissory note, but it was, in fact, an agreement engrafted on a note; the transaction was entire (*f*).

In *Davies* v. *Wilkinson* (*g*), the following was also admitted as an agreement, being stamped as such, *viz.* :—"I agree to pay *C D.*, or his order, the sum of 695*l.*, at four instalments, *viz.* : the first to be paid on Monday, June 10, 1833, being 200*l.* ; the second on the settling day at Doncaster after the St. Leger, being 150*l.* ; the third on the settling day at Doncaster after Epsom, 1834, &c. ; and the remainder, 95*l.*, to go as a set-off for an order of Mr. *Reynolds* to Mr. *Thompson*, and the remainder of his debt owing from *C. Davies* to him." Although a promissory note to a particular point, the other part took it out of that class of instruments, and constituted it a special agreement.

Note, and declaration of deposit of deeds.

A note in the following form, "On demand I promise to pay Mr. *G.*, or order, the sum of 120*l.*, with lawful interest for the same, for value received; and I have deposited in his hands title deeds to lands purchased from the devisees of Mr. *Toplis*, as a collateral security for the same," duly stamped as a promissory note, and indorsed over to the plaintiff, was afterwards stamped with 2*l.* as an equitable mortgage. It was contended that this was not a promissory note, assignable under the statute of Anne ; and that it was stamped by the Commissioners with the latter stamp, without authority; but the Court held that it was an absolute promissory note, as the principal instrument (*h*). See *Drury* v. *Macaulay*, *ante*, p. 150.

Notes controlled by indorsement.

A promissory note, absolute in itself, may be controlled, and altered in character, by indorsement.

On a note given by *J. M.*, and the defendant and another, promising to pay 200*l.* to the plaintiffs, or order, was the following indorsement, *viz.* :—"The within note is taken for security of all such balances as *J. M.* may happen to owe to *Thos. Leeds & Co*, not extending further than the within-named sum of 200*l*, but this

(*f*) *Bolton* v. *Dugdale*, 4 B. & Ald 619 ; 1 N & M. 412

(*g*) 2 P & D 256 ; 3 Jurist, 405

(*h*) *Wise* v. *Charlton*, 4 Ad & E. 786 ; 6 Nev. & M 364.

note to be in force for six months, and no money liable to be called for sooner, in any case." It was held that, as to the parties to it, the note and indorsement must be taken together, constituting an agreement, and must be stamped accordingly (*i*).

Again, a joint and several promissory note, whereby parties, (defendants,) promised to pay to *J. F.*, or order, 25*l.*, "being the amount of the purchase-money for a quantity of fir belonging to *D. H.*, and then lying in the parish of Fillingham," had the following indorsed upon it, *viz.* :—"This note was given on condition that if any dispute shall arise between Lady *W.* and *D. H.* respecting the sale of the within-mentioned fir, then the note to be void;" and, in an action by an indorsee of the note, it was held that the indorsement must be taken as a part of the instrument, which was not, therefore, a promissory note for payment of money, absolutely (*k*).

But in an action by the payee of a note for 1000*l.*, on which was an indorsement that, "Although the within promissory note is payable by *C. M.* at the expiration of two years from the date, it is my will and desire, that the money shall not be called in at the expiration of that period, if *C. M.* shall wish to continue the same on the within security for any longer period; and I desire my executors to permit the same to remain as long as convenient to the said *C. M.*, until three years after my decease, he paying the interest;" the note was admitted; Lord *Ellenborough* observing, "I have on one side a perfect note, on the other that which, if stamped, might have operated as a defeazance, but, without a stamp, I cannot look at it. Supposing, however, these words to be incorporated, they were words of mere indulgence, and favour; he says, My will and desire is, &c.; as to the executors, the case might be different" (*l*).

It might be remarked on this case, that, supposing the indorsement to be such as to require a stamp, his Lordship was at liberty, himself, to look at it, to see if it affected the note, although it could not be shown to the jury (*m*).

The trial of an action was postponed, upon an agreement that the defendant should give a promissory note for the damages and costs, if any, to be recovered; the note to remain with the plaintiff's attorney, and be delivered up, if a verdict should be given for

(*i*) *Leeds* v. *Lancashire*, 2 Camp. 205.

(*k*) *Hartley* v. *Wilkinson*, 4 Camp. 127; 4 M. & S. 25.

(*l*) *Stone* v. *Metcalf*, 1 Stark. 53; 4 Camp. 217.

(*m*) See *Reed* v. *Deere*, 7 B. & C. 261.

the defendant, or the plaintiff should be nonsuited; a note was given accordingly, upon which was an indorsement, not signed, as follows, *viz.*: "This note is given upon the conditions mentioned in the agreement hereto annexed, and in pursuance of the order of *nisi prius* hereto annexed." The Court held that the memorandum was made merely to identify the note, and was not a part of it, and that, therefore, it was not the case of an agreement, or a note made payable on a contingency (*n*).

Where a note, for a definite sum, was given by a person and two others, as his sureties, to certain bankers, a memorandum indorsed on it, signed by the makers, stating that it was given for securing floating advances made by the bankers, with interest, commission, &c., was held to be chargeable with stamp duty as an agreement (*o*). See "INSTRUMENTS."

Note under the Lords' Act for payment of prisoner's allowance.

A note for payment of the weekly allowance of 3*s.* 6*d.* to a prisoner, under the Lords' Act, was, at first, considered liable to duty, as a promissory note; but it was contended that it was for payment of money under 40*s.*; for, if it was not regularly paid, the prisoner was entitled to his discharge, and the note was at an end; and, after a conference, the Judges held it to be not liable (*p*).

I O U.

A simple acknowledgment of a debt is not liable to stamp duty, either as a receipt, or a promissory note. A memorandum, "I O U eight guineas," is of this description. In *Fisher* v. *Leslie* (*q*), this was so held. Lord *Eldon*, C. J., in *Grey* v. *Harris* (*r*), expressed, it is said, a different opinion; but Lord *Ellenborough*, on the authority of *Fisher* v. *Leslie*, received the memorandum, "I owe my father 470*l.*," in evidence, without a stamp, although entertaining some doubt upon the point (*s*).

Again, in *Childers* v. *Boulnois* (*t*), *Abbott*, C. J., admitted in evidence, papers, "I O U 400*l.*," and "I O U 250*l.*;" at the same time leaving it to the jury to say, whether on the whole evidence, there was sufficient to convince them that the plaintiff was really entitled to the sums, there being no date of time or place, nor any address; and the jury found for the defendant.

It was determined in *Curtis* v. *Rickards* (*u*), that the person possessing a document of this kind, was to be presumed to be the

(*n*) *Brill* v. *Crick*, 1 M. & W. 232; Tyr. & G. 522; 1 Gale, 441.

(*o*) *Cholmeley* v. *Darley*, 14 L. J. R. (N. S.) Exch. 328; 14 M. & W. 344.

(*p*) *Bowring* v. *Edgar*, 1 B. & P. 270; *Pitman* v. *Haynes*, 7 T. R. 530; *Tekell* v. *Casey*, 7 T. R. 671.

(*q*) 1 Esp. 426.

(*r*) 1 Camp. 501.

(*s*) *Israel* v. *Israel*, 1 Camp. 499.

(*t*) 1 Dow. & R. 8.

(*u*) 1 M. & G. 46.

person to whom it was addressed; it was contended, that if that was the case, it might be negotiable, and ought to be stamped, but the Court said it was to be considered without reference to the Stamp Act.

In *Gould* v. *Coombs* (*x*) a memorandum, "I owe Mr. *John Gould* the sum of 200*l.* for value received," was admitted without a stamp.

I O U, with a promise to pay.

But a memorandum as follows:—"11th Oct. 1841, I O U 20*l.* to be paid on the 22nd instant," having, on the trial, been received in evidence, without a stamp, to prove a set-off, the Court, on motion to increase the damages, held that it was either a promissory note, which required no particular form of words, or else an agreement to pay money, and, in either case, it required a stamp (*y*).

The same form of words was held by Mr. Baron *Rolfe*, in *Warthman* v. *Elsee* (*z*), to be a promissory note. See also *Evans* v. *Phillpotts* (*a*), where the words "I O U 15*l.* 4*s.* for Self and *Phillpotts*," coupled with special matter, were held by *Gurney*, B., to amount to an agreement (under 20*l.*).

"I O U 45*l.* 13*s.*, which I borrowed of Mrs. *Melanotte*, and to pay her five *per cent.* till paid," was held not to require a stamp; the only agreement was to pay interest till the principal was paid, and that interest did not amount to 20*l.* (*b*).

So, also, the following was held not to require a stamp either as a note, or an agreement, there being no promise to pay the principal money, nor any contract, the subject-matter of which was of the value of 20*l.*; *viz.*: "Berwick, 16 March, 1841; Received of Mrs. *B. T.* the sum of 170*l.*, for which I promise to pay her at the rate of 5*l.* *per cent*, from the above date" (*c*).

Signatures added.

A note, in the singular number, was signed by two persons, and it was contended that this was the note of each, and required two stamps; but the Judge (*Bayley*) thought that it might be considered joint and several; the letter "I" applied to each; Lord *Kenyon* had so ruled; he (Mr. Justice *Bayley*) observed, that if it was part of the bargain, that the second person should sign, as a principal, he might sign at any time subsequent to the other; but that if it was no part of the original bargain, and the second per-

(*x*) 9 Jurist, 494; 14 L. J. R. (N. S.) C. P. 175; 1 M. G. & S. 543.

(*y*) *Brooks* v. *Elkins*, 2 Gale, 200; 2 M. & W. 74.

(*z*) 1 Car. & K. 35.

(*a*) 9 C. & P. 271.

(*b*) *Melanotte* v. *Teesdale*, 13 L. J. R. (N. S.) Exch. 358; 13 M. & W. 216.

(*c*) *Taylor* v. *Steele*, *ante*, p. 41.

son came in upon an after-thought, as a surety merely, then it would require an additional stamp. Other evidence was given, and the plaintiff had a verdict (*d*).

In a case in the Court of Review, the point suggested by Mr. Justice *Bayley* arose, where a joint and several promissory note was given by the bankrupt and eight others; and on an issue tried before *Tindal*, C. J., one question was, whether the note was signed by the bankrupt, in performance of a promise to do so made before it was signed by the others, or, whether she merely added her name upon being subsequently applied to; if the former, the learned Chief Justice stated to the jury that no new stamp was necessary; if the latter, it would be void as to the bankrupt (*e*).

In *Gould* v. *Coombs* (*f*), where a joint and several note was altered, by adding the signature of the widow of one of the makers, the point as to its being a new note, requiring a fresh stamp, was raised, but not decided, it being held to have been properly admitted, to show the consideration for an I O U in support of a count on an account stated.

But, in *Lester* v. *Hunt* (*g*), an action on a promissory note, some evidence being given, on the trial, that the note had been, originally, made by two persons, and that a third had, afterwards, been added, Lord *Denman* held the note to be inadmissible, and the Court of Exchequer determined that his Lordship was right

Note payable to maker's order.

On many recent occasions the question has occupied the attention of the different Courts, whether a note, payable to the order of the maker, is a promissory note, within the Statute of Anne; and, although the opinions of the Courts of Queen's Bench and Exchequer, as to the construction of the Act, differ, no practical difficulty arises therefrom. In *Flight* v. *M'Lean* (*h*) the Court of Exchequer held such a writing not to be a promissory note, within the statute; which requires that it shall be made payable to some "other person" or order, or to bearer. In *Wood* v. *Mytton* (*i*), and *Absolon* v. *Marks* (*k*), the Court of Queen's Bench determined that a note of this kind was a legal instrument, within the statute, and negotiable. The same point was, again, discussed in *Hooper* v. *Williams* (*l*), when Mr. Baron *Parke* took pains to reconcile the

(*d*) *Clerk* v. *Blackstock*, 1 Holt, 474.
(*e*) *Re Johnson, ex parte White*, 2 Dea. & C. 334
(*f*) P. 160, *ante*.
(*g*) 4 Law Times, 419.
(*h*) 16 L. J. R. (N. S.) Exch. 23.
(*i*) 16 L. J. R. (N. S.) Q. B. 446; 10 A. & E. (N. S.) 805.
(*k*) 17 L. J. R. (N. S.) Q B. 7.
(*l*) 17 L. J. R. (N. S.) Exch. 315.

decisions in the previous cases. He observed, that, after a careful perusal of the Act, the Court still considered that it did not contemplate such notes; that, nevertheless, the decisions were not at variance; that notes of this kind were incomplete instruments, having no binding effect on any one, till indorsed; that, when indorsed, they became binding promissory notes, according to the terms of the indorsement, whether to *A. B.*, or to *A. B.* or his order, or in blank: and the Court, therefore, held, that the note, in that case, which was payable to the defendant, (the maker,) or his order, at two months after date, and indorsed in blank, was a valid note, payable, at that date, to bearer. The Court of Common Pleas, subsequently, expressed the same opinion in *Brown* v. *De Winton* and *Gay* v. *Lander* (*m*).

It will be perceived that the distinction taken is unattended with any practical difference, whether in reference to the instrument, itself, or the stamp duty.

Different classes of notes.

On reference to the TABLE, it will be observed that there are several clases of promissory notes, charged with duties at different rates; which may be thus abstracted:—

Bearer on demand (bankers' re-issuable notes).

1st, Notes not exceeding 100*l.*, payable to *bearer on demand;* which are allowed to be re-issued, and the rate of duty on which is higher than that on any others. These notes are issued by bankers, only, under a licence for that purpose.

Not exceeding two months' date, or sixty days' sight.

2ndly, Notes not exceeding 100*l.* payable *in any other manner than to the bearer on demand;* or, exceeding 100*l.*, *either to the bearer on demand,* or *in any other manner;* but not exceeding, in any case, two months after date, or sixty days after sight.

Exceeding those periods.

3rdly, Notes for any amount, (not under 40*s.*,) payable to the *bearer, or otherwise,* exceeding those periods, respectively.

What class certain notes fall under.

Questions have arisen, under which of these heads certain forms of notes, not coming, precisely, within the description of any one, fall.

Payable to *A B.* or bearer.

In *Whitlock* v. *Underwood* (*n*) a note, by which the maker promised to pay "to *W.*, or bearer, 40*l.* value received," was held to be, in law, payable on demand, and to fall within the first class, as a note payable to bearer on demand; that the schedule to the Stamp Act, although it conferred on the notes of that class the privilege of being re-issued, was not confined to such

(*m*) 17 L. J. R. (N. S.) C. P. 281, 286.

(*n*) 2 B. & C. 157.

notes as might lawfully be re-issued, and that the clauses in the Act relating to licences to issue such notes, did not affect the question.

"On demand, I promise to pay the bearer hereof the sum of 11*l* 10*s*, with interest, for value received," was held, in *East* v. —— (*o*), to be, also, within the first class of notes; and, consequently, insufficiently stamped with 1*s*. 6*d*.; there was no fixed, limited time for payment, it was, therefore, payable on demand; it was, also, payable to bearer. This case, (in the Exchequer Chamber,) is referred to as the same as *Keates* v. *Wheildon* (*p*), both by Mr. *Chitty* (*q*), and Mr. *Collins* (*r*); but there is some mistake, either in the report, or the reference to it; the notes set out, in the two cases, agree, only, in the amount; the difference being most important; *Keates* v. *Wheildon* has been, since, with entire approbation, overruled; but it is submitted, with much respect, that this is not so with *East* v. ——; nor yet with *Whitlock* v. *Underwood*, which is observed by the latter learned writer, to have been, also, overruled. In both these cases the notes were payable at no express period; they were, necessarily, therefore, payable, as held in each case, on demand; they were, also, expressly, payable to bearer; and the circumstance of the introduction of the name of a person, as the payee, whether real or fictitious, can, certainly, make no difference; Bank of England notes are, always, payable to a person, by name, as well as to bearer; such notes require no indorsement by any one, and are, in fact, it must be admitted, payable to bearer on demand, and may, under a licence, be lawfully re-issued.

To *A. B.* on demand.

In *Keates* v. *Wheildon*, the note was as follows, *viz.*: "I, *J. Wheildon*, do promise to pay to *J. Keates* the sum of 11*l*. 10*s*., on demand, with lawful interest for the same;" and it was held to fall within the first class, and not within the second, under which it was stamped. This determination might well, as it did, excite surprise; it did not, however, remain long undisturbed.

To *A. B.*, or order, on demand.

Armitage v. *Bury* (*s*) was decided in the following year, in which a promissory note, in these words, "On demand, we promise to pay *J. A.* or order 100*l*.," was held to be a note within the second class. There was far more reason for considering this a note payable to bearer on demand, which it may be said to have amounted to, in effect, although it was not so, in terms, than that in *Keates* v. *Wheildon*; which case was referred to by the counsel

(*o*) 2 Man. & Ry. 8.
(*p*) 8 B. & C. 7.
(*q*) Chitty's Stamp Laws, 275.
(*r*) Collins's Stamp Laws, 249.
(*s*) 5 Bing. 501.

for the defendant, but of which no notice is reported to have been taken by the Court.

Moyser v. *Whitaker* (*t*), was disposed of about the same period, in the Court of King's Bench. In this case, a note payable on demand to *A. B.*, or order, was, again, determined to fall within the second class; *Parke*, J., observing, that if *Keates* v. *Wheildon* were reconsidered, he was not, by any means, sure, that the Court would come to the same conclusion as before. *Bayley*, J., who had taken a part in deciding *Keates* v. *Wheildon*, said, that this was not payable to bearer, and, therefore, was not within the first class; that it was payable otherwise than to bearer on demand, and did not exceed two months after date, or sixty days after sight; asking, "If on demand, how can it?" that the fair construction was, to hold that the second class included notes not, necessarily, exceeding those periods.

In the Court of Review, a similar decision was come to, on a note of the same description; Sir *Albert Pell* remarking, that he could hardly conceive the judgment of Lord *Tenterden* to be as reported; that an order to pay *A. B.* only, was not equivalent to an order to pay any person, as it was not negotiable (*u*).

To *A. B.*

A case, resembling *Keates* v. *Wheildon*, soon after came on for discussion in the Court of King's Bench; a note as follows:—"I promise to pay to *M. M.* the sum of 100*l.* for value received," was stamped as one within the second class, and, on the authority of *Keates* v. *Wheildon*, the Lord Chief Justice refused to admit it in evidence; at the same time observing, that he thought the stamp was right; he non-suited the plaintiff, but, with leave to move to enter a verdict; and, on motion for that purpose, the Court were all of opinion that *Keates* v. *Wheildon* could not be supported (*x*).

Strange as it may appear that such a question should ever have been mooted at all, it is more to be wondered at that it should be, again, raised; precisely the same point, however, as in *Keates* v. *Wheildon*, arose, in the Court of Exchequer, in that of *Dixon* v. *Chambers* (*y*). A note, promising to pay the plaintiff, on demand, 20*l.* was objected to, as not stamped according to the first class, but the Court said that *Keates* v. *Wheildon* had been, expressly, overruled.

Points esta-

The foregoing cases, commencing with *Whitlock* v. *Underwood*,

(*t*) 9 B. & C. 409; Dans. & Ll. 216.

(*u*) *Re Restall, ex parte Robinson*, 1 Deg. & C. 275.

(*x*) *Cheetham* v. *Butler*, 5 B. & Ad. 837; 2 N. & M. 453.

(*y*) 1 C. M. & R. 845; 5 Tyr. 502; 1 Gale, 14.

clearly establish these points, *viz.*, that a promissory note, payable, in terms, at no specific period, is payable on demand; and if it be made payable to bearer, that it falls within the first class of notes, (not exceeding 100*l.*,) which are described as "promissory notes for the payment to the bearer on demand, of any sum of money;" notwithstanding such notes cannot, lawfully, be issued, without a banker's licence; and, also, that a promissory note payable on demand, is chargeable with stamp duty as a note payable, at a period, not exceeding two months after date, or sixty days after sight.

blished by the foregoing cases.

In *Sturdy* v. *Henderson* (*z*), it was contended that a note, payable two months after *sight*, was the same as one payable two months after *date;* that no place being fixed where it was to be presented, for sight, the terms were synonymous; that the two months must be calculated from the date, and that, therefore, a note, of this kind, was subject to duty as one not exceeding two months after date; but the Court held otherwise, the time began to run from the period when the note was presented, for sight, and not from the date.

After sight not the same as after date.

In *Nicholson* v. *Smith* (*a*), *Abbott*, C. J., refused to admit a bill of exchange as evidence of a contract between parties, it not being stamped as an agreement. That was an action for 245*l.*, for spirits sold; and, to prove the agreement to take the stock, the bill in question, drawn by the plaintiff on the defendant for 30*l.*, "being the amount of British spirits transferred to him," was produced. If this had been stamped as an agreement only, it would have been equally inadmissible; for, being, in its primary character, a bill, it must have been stamped as such, notwithstanding neither the bill, nor the sum mentioned in it, was the subject of the action. The consideration specified was tantamount, merely, to "value received;" and did not, in the least, alter the nature or character of the instrument; and although the circumstance of its existence, with such consideration so expressed, might afford proof of the contract, it was, in part, carrying into effect; it was, nevertheless, still only a bill of exchange. The propriety of this decision may, perhaps, be questionable.

A bill to prove a contract required to be stamped also as an agreement.

Foreign bills and notes, drawn or made out of the United Kingdom, may be negotiated within the kingdom, unstamped; with the exception of promissory notes payable to the bearer on demand, which, by the 55 Geo. III. c. 184, s. 29, are prohibited from

Foreign bills and notes.

(*z*) 4 B. & Ald. 592. (*a*) 3 Stark. 128.

being negotiated, circulated, or paid in Great Britain, unless stamped as notes made in the kingdom; (which provision is in lieu of that contained in the 48 Geo. III. c. 149, prohibiting promissory notes *of any kind*, made out of Great Britain, from being negotiated, circulated, or paid here, unless stamped;) but a note made abroad, and subject to stamp duty by the laws of the country where so made, was held by Lord *Kenyon*, in *Alves* v. *Hodgson* (*b*), not to be good here, unless stamped according to such laws. But see *James* v. *Catherwood* (*c*), where it was said that the Courts of this country will not take notice of the revenue laws of foreign states. And see *Legrelle* v. *Davis* (*d*); and the early cases of *Holman* v. *Johnson* (*e*), and *Rotch* v. *Edie* (*f*); in the former of which Lord *Mansfield* said, that no country takes notice of the revenue laws of another; which remark was referred to by Mr. Justice *Lawrence*, in the latter. See, also, "INSTRUMENTS."

Several bills in a set, all negotiated.

Bills were drawn in sets, at Calcutta, upon *Jas. Hunter & Co.*, payable to *W. Hunter & Co.*; the defendant, who was a partner in both firms, on receiving the second part of each bill, accepted and indorsed it over; afterwards, on receiving the other parts, he accepted the first part of each, and indorsed it to a different party. It was contended, that if the negotiation of these latter parts were lawful, they must be treated as the acceptor's own bills, drawn and accepted in England, and, therefore, liable to stamp duty; but the Court said, that this would be to put the law in opposition to fact, and that the Stamp Act must not, by construction, be strained to meet such a case. If the bill had been drawn in England, though purporting to be drawn in Calcutta, the case would have been different (*g*).

Bills drawn abroad, with blanks to be filled up in England.

Copper-plate impressions of bills were signed in Ireland, by persons residing there, in blank, as to the dates, sums, times when payable, and names of the drawees; and transmitted, in that state, to a person in London, to be used by him for his own accommodation; the blanks were all filled up in London, and the bills were then negotiated; they were drawn on Irish stamps: it was held that they were foreign bills, and not liable to British stamp duty (*h*).

Blank left in i

Crutchley v. *Mann* (*i*) was the case of a bill drawn in Jamaica,

(*b*) 7 T. R. 241.
(*c*) 3 D. & R. 190.
(*d*) 5 Law Times, 54.
(*e*) Cowp. 343.
(*f*) 6 T. R. 425.
(*g*) *Holdsworth* v. *Hunter*, 10 B. & C. 449; 5 Man. & Ry. 393.
(*h*) *Snaith* v. *Mingay*, 1 M. & S. 87.
(*i*) 5 Taunt. 529; 1 Marsh. 29.

(on a colonial stamp,) on the defendant, in London, in which a space for the payee's name was left blank; the plaintiff received the bill from the captain of a vessel, who had it from the drawer; he inserted his own name in it, as the payee; it was objected, amongst other things, that it required an English stamp, but it was not so determined; the case was decided on other grounds, *viz.*, that there was no evidence to show that the plaintiff was authorized to insert his own name, nor that the defendant had accepted the bill; the acceptance, if any, not being on the face of the bill, but contained in a letter, in which the defendant said he would accept the bill, if again presented, but which the Court held should have been stamped as an agreement.

foreign bill filled up in England.

A bill was written, and accepted, here, by the agent of a person at Antwerp, and, afterwards, sent to Antwerp, to be signed by the drawer; *Dallas*, C. J., held that it was, actually, drawn at Antwerp, and not, therefore, liable to British stamp duty (*k*).

Bill written here, but signed by the drawer abroad.

Certain foreign bills are, however, liable to stamp duty; that is to say, bills drawn in, but payable out of, the kingdom. These bills, if drawn singly, and not in a set, are chargeable with the same duty as inland bills; but if drawn in sets, according to the custom of merchants, a much lower duty is payable on each bill.

Foreign bills within the Stamp Act.

In order to render any such bill, impressed with the lower duty, valid, it is, of course, essential that it should be one of a set, and that every bill, in the set, should be, also, stamped. It is understood that a fraudulent practice, has, of late, crept in, and is pursued by persons of indifferent reputation, of drawing, in a set, bills chargeable with this duty, but of putting one, only, on a stamp; such persons asserting that, although they evade the duty, they comply with the Act of Parliament. It is, scarcely, necessary, however, to caution persons, especially in this country, against advancing money on bills of this kind without being assured that every bill of the set is properly stamped.

A bill was drawn in London, on a person at Brussels, in the following form, *viz.*: "At three months' date, pay this first of exchange to the order of self, in London, 312*l.* 11*s.* 9*d.* value received, which place to account, as advised;" it was accepted, payable in London, and was stamped as a foreign bill in a set, but the Court held it to be chargeable as an inland bill (*l*).

A bill drawn in London on a person abroad, but payable here, is liable as an inland bill.

In an action on a bill, dated Paris, 1st March, 1815, the defence

Evidence of

(*k*) *Boehm* v. *Campbell*, Gow. 55. 468; 5 Tyr. 942; 1 Gale, 191.
(*l*) *Amner* v. *Clark*, 2 C. M. & R.

bill drawn abroad.

was, that the bill was drawn in London, and, therefore, void for want of a stamp; evidence was given that the drawer was seen in London on the 3rd March. The report of the case is somewhat obscure, but it seems to have been considered, that the evidence was not sufficient to prove that the bill was drawn in England (*m*).

In a later case, in an action upon a bill drawn on a French stamp, and dated Paris, evidence of the drawer being seen in England up to the date of the bill, was left to the jury, who were at liberty to infer, from the circumstance, that the bill was, in point of fact, drawn in England (*n*). But see the case of *Bartlett* v. *Smith* (*o*), as to leaving questions of this kind to the jury.

The acceptor of an unstamped bill, who knew that it was drawn in England, although dated in France, may object to it, in an action by an indorsee for value without notice.

An unstamped bill of exchange drawn in England, but purporting to be drawn in France, came into the hands of an indorsee for value, without notice, who brought an action upon it against the acceptor, to whom the fact of the irregularity attending it was known. The bill was admitted by Lord *Denman* on the trial, and the plaintiff had a verdict, but with leave to the defendant to move to enter a nonsuit. On showing cause against the rule it was contended, that such an objection was not open to a party who culpably stands by, and allows another to contract, on the faith and understanding of a fact which he can contradict; to which it was answered, that the rule alluded to did not apply to the revenue. The Court held, that the objection was, strictly and properly, one to be made by the Court, whenever it appeared to them, upon the trial, that an instrument had not been stamped; the 31 Geo. III. c. 25, which enacted that no bill should be admitted, unless it was stamped, was still in force; and the doctrine of estoppel was not, in strictness, applicable; the Lord Chief Justice, *Tindal*, who delivered the judgment, referred to *Field* v. *Woods* (*p*), where it was held, that it was competent for the maker of a check to object that it was post-dated; and observed, that they were unable to see any other ground, either upon principle or authority, on which the defendant was prevented from taking the objection, or the Court from giving effect to it (*q*).

The same has been since held in *Bennison* v. *Jewison* (*r*); but in which Mr Baron *Parke*, on the trial, refused, on proof that the bill, which was dated "Bombay," and unstamped, was drawn in

(*m*) *Abraham* v. *Dubois*, 4 Camp. 269.

(*n*) *Biré* v *Moreau*, 2 C. & P. 376.

(*o*) Page 191, *post*

(*p*) Page 173, *post*.

(*q*) *Steadman* v. *Duhamel*, 14 L. J. R. (N. S.) C. P. 270.

(*r*) 12 Jur. 485.

London, to admit it. On the motion for a new trial it was urged, that the fact, where the bill was drawn, was one for the jury; but the Court held that the learned Baron was right; that it was an intermediate question, to be determined by the Judge. On the plaintiff's counsel suggesting, whether it lay with the defendant to take the objection to the bill, as against an innocent indorsee, it was answered that the Crown was deeply interested; that any such argument, although not maintainable anywhere, found less favour in the Court of Exchequer; the Lord Chief Baron observing that it would be monstrous if parties could agree to evade the stamp laws.

Evidence of payee admitted to prove where drawn.

The payee may be a witness, in an action by an indorsee against the acceptor, to show that the bill, purporting to be drawn abroad, was, in fact, drawn in London (*s*).

Unstamped note not admitted under 9 Geo. IV. c. 14.

A promissory note, on an insufficient stamp, cannot be received in evidence to take a case out of the Statute of Limitations, under the 9 Geo. IV. c. 14 (*t*).

After judgment by default, no objection can be taken.

On executing a writ of inquiry, on a judgment by default, in an action on a note, the note, on being produced, appeared to be on a wrong stamp, and the under-sheriff told the jury that they could not look at it; but they found for the full amount of principal and interest; and the Court, on a motion to set aside the verdict, said they did right; they had only to look at the date, and compute principal and interest, which might have been done on a rule to compute (*u*).

Money repaid supposing the stamp wrong, may be recovered if the stamp be right.

Where the indorsee of a bill repaid to the holder the amount, under the idea that the bill was void, for want of a proper stamp, in ignorance of the fact that the bill had been drawn in Ireland, and that the stamp was, therefore, sufficient, it was held, there being no laches on his part, that he might recover the money back, in an action for money had and received (*x*).

The date is that on the face of the bill.

The date of a bill, in reference to the charge of duty, depending on the period of payment after date, is that on the face of it. The date of a bill, at two months, was, afterwards, (under circumstances not appearing to cause objection,) altered to a subsequent day; it was contended that it required the higher stamp, as payable at a longer period than two months after date; but it was held, that

(*s*) *Jordaine* v. *Lashbrooke*, 7 T. R. 601.

(*t*) *Jones* v. *Ryder*, 4 M. & W. 32; and pp. 8 & 55, *ante*.

(*u*) *Watson* v. *Glover*, 12 L. J. R. (N. S.) C. P. 184.

(*x*) *Milnes* v. *Duncan*, 6 B. & C. 671; see also *Bell* v. *Gardner*, page 192.

the date meant by the statute, was that appearing on the bill (*y*). And so, for other purposes than the stamp duty, the date appearing on the bill is to be considered, *primâ facie*, the real date, as in the case of other instruments (*z*).

A post-dated bill is not void;

A bill at two months date, and stamped accordingly, was issued a week before the date, so as to become payable at a more distant period from the making than two months; and, on the trial, the Judge (*Patteson*) nonsuited the plaintiff; but the court granted a new trial, Mr. Justice *Patteson* observing, that if *Upstone* v. *Marchant* had been pointed out to him he should not have nonsuited the plaintiff (*a*).

but the parties are liable to penalties.

In cases of this description, where stamp duty is evaded, the parties to the bills incur penalties, as in the case of post-dated checks, but the instrument is not, as checks are, in such cases, void.

Lost bill presumed to be stamped.

In a case where an order for payment of money, out of a particular fund, was proved to be lost, and secondary evidence, by means of an affidavit made by the defendant, setting it out, was allowed to be given of it, the Court presumed that it was duly stamped (*b*).

Variance between words and figures.

In case of a variance in the amount, as stated in words in the body of the bill, and in the figures, the former will be taken to be the correct amount, and evidence, as in the case of other instruments, will not be received to explain a patent ambiguity (*c*).

Bills and notes, how far negotiable after having been paid.

Until a bill of exchange has, in the language of a learned Judge, discharged its functions, no objection arises on the Stamp Act, if it be, in accordance with the law merchant, put into circulation after having been paid. A promissory note, when once paid according to its tenor, cannot, of course, be issued again; except in the case of notes payable to bearer on demand, and, expressly, allowed to be re-issued.

A note delivered as a security after having been paid, not available.

A promissory note dated 26 June, 1833, made as a security for a debt due from the drawers, and indorsed, at their request, by a third party, was deposited with the creditors, and on the 1st July following was paid by, and delivered up to the drawers. In 1836 the note was handed over to a banker, by one of the drawers, as a

(*y*) *Peacock* v *Murrell*, 2 Stark. 558; *Upstone* v. *Marchant*, 2 B. & C. 10; 3 D. & R. 198.

(*z*) *Anderson* v. *Weston*, 6 Bing. N. C. 296.

(*a*) *Williams* v. *Jarratt*, 5 B. & Ad 32, *Williamson* v. *Garratt*, 2 N. & M. 49.

(*b*) *Pooley* v *Goodwin*, 4 Ad. & E. 94; 5 N. & M. 466; 1 H. & W. 567.

(*c*) *Saunderson* v. *Piper*, 5 Bing. N. C. 425; 3 Jurist, 773.

security for a debt due from him. It was held, in an action by the banker against the indorser, that when the note was paid, in 1833, it was satisfied, and could not be re-issued, by reason of the Stamp Act (*d*).

Appointing the maker executor deemed payment.

The appointment of the maker of a note the executor of the payee, and holder, restrains all further negotiation; the note is, in such a case, considered to have been paid by the executor to himself, and to have become assets in his hands (*e*).

A bill is negotiable until paid by the acceptor.

In *Callow* v. *Lawrence* (*f*), Lord *Ellenborough* said, that a bill was negotiable *ad infinitum*, until paid by the acceptor; if the drawer has paid it, he may sue the acceptor; if, instead of suing him, he puts the bill into circulation, *upon his own indorsement* only, it does not prejudice the other parties who may have indorsed it, (but whose indorsements have been struck out,) that the holder should be at liberty to sue the acceptor; it would be different if they could be prejudiced; which was the distinction between such a case, and *Beck* v. *Robley* (*g*). Mr. Justice *Le Blanc* observed, that as to the stamp, the answer was, that the bill had not discharged its functions. And in *Hubbard* v. *Jackson* (*h*), the learned Judge (*Best*, C. J.,) and, afterwards, the Court, held that a bill, dishonoured by the acceptor, (the defendant,) but afterwards paid by the drawer, might, in reference to *Callow* v. *Lawrence*, be indorsed over again by the drawer.

Two years after a bill had become due, a stranger paid to the indorsee the balance due upon it, and it was indorsed over to him; the question was, whether the money had been paid on behalf of the drawer, as, if it had, it would have satisfied the bill, which could not, afterwards, have been negotiated; but not so, if it was by a person purchasing the bill (*i*). See, also, *Thomas* v. *Fenton*, p. 172, *post*.

The drawer of a bill agreed with the acceptor, that, on the latter giving a mortgage, the bill should be given up, which was effected; the acceptor, afterwards, indorsed the bill, before it became due, to another person, for value, who again indorsed it, for value, to the plaintiff; neither of the latter parties knowing anything of the transaction between the drawer and acceptor. The Court held, that, with reference to the 55 Geo. III. c. 184, as well as according to the law merchant, the drawer was not discharged; that the payment mentioned in that Act, meant payment by the

(*d*) *Bartram* v. *Caddy*, 1 P. & D. 207; W. W. & H. 724.

(*e*) *Freakly* v. *Fox*, 9 B. & C. 130; 4 Man. & R. 18.

(*f*) 3 M. & S. 95.

(*g*) 1 H. B. 89, note.

(*h*) 3 C. & P. 134.

(*i*) *Graves* v. *Key*, 3 B. & Ad. 313.

party liable at maturity, and according to the tenor, and that, therefore, the issuing of the bill, by the acceptor, did not render a new stamp necessary (*k*).

Accommodation bill discharged on payment by drawer.

But in the case of a bill accepted for the accommodation of the drawer, payment by the drawer discharges it, and it cannot be again put into circulation for want of a fresh stamp (*l*).

Not, if paid by acceptor.

Not so, when paid by the acceptor, or, when over-due, by a stranger, who may, again, put it into circulation without a fresh stamp; the stamp upon it not being exhausted, until payment by the drawer, the party ultimately liable (*m*).

Elaborate indorsement.

An indorsement on a note in the following form, "I hereby assign this draft, and all benefit of the money secured thereby, to *A. B.*, and order the within-named *C. D.*, (the maker,) to pay the amount thereof and all interest in respect thereof," was held, by *Gurney*, B., to amount, merely, to a common indorsement, although in an elaborate form (*n*).

No new stamp required by any indorsement.

Although an indorsement of a bill is, in effect, a new drawing of it, every indorser being in the nature of a new drawer, yet it still remains the same instrument, and does not require a fresh stamp (*o*).

See *Plimley* v. *Westley* (*p*), where it was said, that an indorsement of a note, not payable to order, might, if there had been a second stamp, have operated as the making of a new note; and see *Thicknesse* v. *Bromilow* (*q*).

The want of a stamp need not be pleaded, the objection may be made under the plea of *non accepit*, &c.

The want of a stamp to a bill or note may, perhaps, be pleaded, as the defect cannot be remedied (*r*); but it may be dangerous to have recourse to it, if allowable; and it is altogether unnecessary, as the objection may be taken under the plea of non-acceptance, &c. See *Bradley* v. *Bardsley*, "INSTRUMENTS," VIII.

Where, in an action by an indorsee against the acceptor, the defendant pleaded, amongst other things, that the bill was written on paper not duly stamped [it was stamped with an old die, in contravention of the 3 & 4 Will. IV. c. 97, s. 17], the Court granted a rule to strike out the plea, as wholly unnecessary; *Parke*, B., observing, that it was, clearly, a defence under *non accepit* (*s*).

(*k*) *Morley* v. *Culverwell*, 7 M. & W. 174.

(*l*) *Lazarus* v. *Cowie*, page 173, *post*.

(*m*) *Thomas* v. *Fenton*, 11 Jur. 633; 16 L. J. R. (N. S.) Q. B. 362; 5 D. & L. 28.

(*n*) *Richards* v. *Frankum*, 9 C. & P. 221.

(*o*) *Penny* v. *Innes*, 1 C. M. & R. 439; 5 Tyr. 107.

(*p*) *Ante*, page 135.

(*q*) 2 C. & J. 425.

(*r*) Except under the 37 Geo. III. c. 136.

(*s*) *Dawson* v. *Macdonald*, 2 M. & W. 27; 2 Gale, 215.

A plea that the bill declared upon was not duly stamped with any proper stamp denoting the lawful, requisite, and proper rate of duty chargeable thereon, was, on demurrer, held to be insufficient, in reference to the observation of the plaintiff's counsel, that if the bill had been stamped with a higher duty than the statute imposed, it would have been valid, though the stamp would not have been the proper one; the plea also left the plaintiff in doubt as to the nature of the defence; it was not clear whether the defendant meant, that the bill had no stamp at all, or, that it had one of too low, or of too high a denomination (*t*).

Where a bill is put into circulation after payment, a plea of the special facts is good.

But in an action by the indorsee of a bill against the acceptor, the defendant pleaded, that he accepted for the accommodation of the drawer, that the bill was liable to the stamp duties, that after he had accepted it, and before the indorsement to the plaintiff, it was negotiated by the drawer, for his own use, and paid by the drawer, to whom it was delivered up, paid and satisfied; that afterwards, and without having been re-stamped, it was indorsed by the drawer to the plaintiff; of all which the plaintiff had notice. On demurrer the plea was held to be good. The drawer of an accommodation bill is in the situation of an acceptor of a bill for value, he is the person, ultimately, liable, and his payment discharges the bill, altogether, and it cannot be again put into circulation without a fresh stamp (*u*).

The objection to a check need not be pleaded; it may be taken by way of defence.

The objection to the validity of a check need not be pleaded, the defence is admissible under a plea, that the defendant did not make the check (*x*). On the trial of this case, which was before the decision in *Dawson* v. *Macdonald*, the Judge was of opinion that the defence ought to be pleaded, but, on a motion for a new trial, the Court held otherwise. It was also insisted that the objection came too late, that it should have been taken when the instrument was put in, instead of by way of defence; and *Foss* v. *Wagner* (*y*) was cited; but it was held, that where the defect did not appear on the face of the instrument, the objection arising on matter extrinsic, it was the subject of defence, by evidence.

And in an action on a check, where the defendant had pleaded that the check was given for a gambling debt, the Court refused him permission to plead, also, that the check was drawn at a dis-

(*t*) *Hayward* v. *Smith*, 4 Bing. N. C. 684; 1 Arn. 190.

(*u*) *Lazarus* v. *Cowie*, 11 L. J. R. (Q. B.) 310; 3 A. & E. (N. S.) 459; 2 Gale & D. 487.

(*x*) *Field* v. *Woods*, 8 C. & P. 52; 7 Ad. & E. 114.

(*y*) 7 A. & E. 116. *See* "INSTRUMENTS."

tance from the banker of more than fifteen miles, as any plea, which denied the drawing of the check, would have raised the objection as to the stamp (*z*).

Again, in an action against the drawer of a check, in which the defendant pleaded that the check was given to secure a gambling debt, a rule to add a plea, that it was drawn at more than fifteen miles from the place at which it was payable, and that it was falsely dated, was refused; the Court would not interfere, to assist the defendant, in defeating an instrument, which he had, knowingly, executed in an illegal matter; if he wished to raise the defence he should have pleaded, that he did not make the check (*a*).

In assumpsit, by an officer of a banking company, under the 7 Geo. IV. c. 46, on a promissory note made by the defendant, a plea, that the consideration for the note was money advanced by the company in payment of drafts and orders upon them, made and issued at a distance exceeding 15 miles, and in which the place of issuing was not truly specified, was, on demurrer, held bad, not alleging that they were payable to bearer on demand, and that they were for sums amounting to, or exceeding 40*s*. (*b*).

See further observations as to pleading in reference to the stamp laws under "INSTRUMENTS."

Instruments stamped after they are written.

Bills and notes.

The Court will not, in ordinary cases, stop to inquire when the stamp upon any instrument was impressed; nor, in reference to the stamp laws, is there, at any time, any object in so doing, except where the Commissioners are prohibited from stamping the instrument after it is written. There are some instances in which this is the case, those of bills of exchange and promissory notes being amongst them; but, as regards these instruments, themselves, it is not, now, necessary to discuss the cases that have arisen respecting them; because, it is not admitted to be possible that any such instrument can, *quâ* bill or note, be stamped after it is written; the Commissioners will not authorize, nor can any person, by any contrivance, procure the impression of any die, applicable to a bill of exchange or a promissory note, to be put upon any writing; (except in the single instance where the law allows of such stamping; see 37 Geo III. c 136, *ante*, page 115). A document may be of a questionable character, and it may be stamped, after it is written, as an agreement; but that will not render it available as a bill, or a note. This was not, however, the case

(*z*) *Jenkins* v. *Creech*, 5 Dowl. 293. W. 52.
(*a*) *McDowall* v. *Fyster*, 2 M & (*b*) *Green v. Allday*, 1 Gale, 218.

before stamps became exclusively appropriated to instruments of that kind, as before noticed (*c*); previously, therefore, to such appropriation, any stamp (not, itself, appropriated, by name, to another instrument), if of sufficient amount, rendered a bill or note available, although impressed upon it in another character, unless it was made appear to have been stamped after it was signed. But, although, in reference to bills and notes, this question is not now material, yet, in a general point of view, it will be proper and useful to consider the cases determined upon it, in relation to those instruments.

In *Butts* v. *Swann* (*d*), it was decided that a bill of exchange, stamped after it was written, could not be read. Another case to the same effect is *Green* v. *Davies* (*e*), where the following paper was produced, *viz.*:—"Dec. 28, 1813, received of Mr. Boaz 100*l.*, which I promise to pay, on demand, with lawful interest," which had upon it a threepenny receipt stamp, and, also, an agreement stamp of 20*s.*, for which latter duty, and for the penalty of 5*l.* paid on impressing it, a receipt was indorsed. The Court held the document to be a promissory note; that, by reference to the 31 Geo. III. c. 25, s. 19, no stamp could be, lawfully, put upon it; that an inquiry was admissible when the stamp was impressed, which, indeed, appeared by the minute thereon; and that the stamp, so improperly added, under the prohibition, did not remove the objection that the note was not sufficiently stamped when it was issued. On the trial, the document had been admitted in support of the money count.

Wright v. *Riley* (*f*) was referred to in *Green* v. *Davies*, as establishing a contrary doctrine; that was an action by an indorsee of a bill, which, when produced, appeared to be properly stamped, but it was proved not to have been so, when drawn, and Lord *Kenyon* held, that though the Commissioners might have exceeded their duty in stamping it, still that, being stamped, he thought it became a valid instrument, and that a Judge at *nisi prius* could not inquire how, and at what time, it was stamped; that much inconvenience might arise, and a great check be put upon paper credit, if the objection was to be allowed; for, how was it possible for a man, taking a bill in the ordinary course of business, to know whether it had been stamped previously to the making of it, or not?

The Court, in *Green* v. *Davies*, did not, expressly, overrule this

(*c*) Page 4, *ante*
(*d*) Page 143, *ante*.
(*e*) 1 C. & P. 451; 4 B. & C. 235
(*f*) Peake, 173.

case, but drew a distinction between them; seeming to admit, that if the original defect be not patent, an innocent holder, (as in *Wright* v. *Riley*,) might sustain an action upon the bill; but as this remark could only extend to writings of that description, no case can, now, arise to which it would be applicable.

In *Wheatley* v. *Williams* (*g*), a paper, which was held to be a promissory note, was stamped as an agreement; but it did not appear when it was stamped; and it was considered to be within the 10th sect. of the 55 Geo. III. c. 184, unless, in fact, the stamp had been impressed since it was signed; and if that should turn out to be so, it would go for nothing.

In the case of other instruments which the Commissioners are prohibited from stamping, after they are made, the Court will take notice of the time of stamping, as in *Roderick* v. *Hovil* (*h*), which was the case of a policy of sea insurance, stamped after a former trial, and where Lord *Ellenborough* said, the statute was imperative upon him; and the plaintiff was, again, nonsuited.

Alterations in bills and notes.

ALTERATIONS IN BILLS AND NOTES.—The peculiar, and almost isolated laws, by which bills of exchange and promissory notes are, for the most part, regulated, necessarily lead to decisions but slightly, if at all, influenced by the law applicable to instruments in general. This may be said to be, in some measure, the case, as well with regard to alterations made in those particular instruments, as to other circumstances, although the application of the general law, in this respect, is not, of course, excluded. A bill or note is, by a material alteration made in it, vitally affected, by the operation of the stamp laws, in a manner peculiar to these, and a few other writings. The consequence of any such alteration in a bill or note is, in most instances, the invalidating of the instrument; this, however, may result from a cause altogether unconnected with the stamp duties; but, although the principles upon which the decisions upon the point proceed, may be sufficiently intelligible, it is not, at all times, easy to distinguish, in the report of a case, whether a bill or note is rejected, as void, for want of a stamp, or for any other cause; sometimes the ground is, expressly, stated, and, in the majority of instances, no doubt, both causes operate. As regards the stamp duty, the principle upon which a document of this kind is rendered inadmissible, by reason of an alteration in it, is, that it has, thereby, become a new instrument, requiring a fresh stamp; and, as such stamp cannot be procured,

(*g*) *Ante*, page 151. (*h*) 3 Camp. 103.

the objection goes to the total annihilation of the instrument; which circumstance marks the distinction, before alluded to, between these and other writings. See the subject treated on more at large under the head "INSTRUMENTS."

The alteration must be material.

The alteration, so as to affect the validity of a bill or note, must, as stated by Lord *Kenyon* in *Trapp* v. *Spearman* (*i*), be in a material part, though it was, formerly, held otherwise. In that case, the addition of the words "when due at the Cross Keys, Blackfriars Road," was held not to be such an alteration. See also *Catton* v. *Simpson*, page 184, *post*.

Alteration to correct mistake, allowed.

The words "or order" added.

An alteration may be made, by consent, where it is, merely, for the purpose of correcting a mistake. A bill was drawn on the 1st of August, and put into circulation by indorsement. On the following day it was discovered to want the words "or order," so that it could not be negotiated; and application was made to the drawer to supply the deficiency, which was done, with the concurrence of all parties. Mr. Justice *Le Blanc* was of opinion, at the trial, that no new stamp was necessary, that the insertion of the additional words was not the making of a new bill, but, merely, the correcting of a mistake; and he admitted it in evidence. The Court, afterwards, refused a rule for a new trial (*k*). The principle of this decision is distinctly admitted in subsequent cases, reference being constantly made to it, as establishing a test by which other cases of the same kind, (the alteration being made by consent,) are to be tried. Lord *Ellenborough*, in *Cordwell* v. *Martin* (*l*), observed, that it appeared to him that the only indulgence to be allowed, in this respect, was, where a mistake in the terms had been made, which is rectified before the bill gets abroad, so that the whole might be considered as one act. *Kershaw* v. *Cox* would seem to go a little farther; for, in that case, the bill had got abroad, although the attempted transfer was nugatory, for want of the words, afterwards, supplied.

In *Byrom* v. *Thompson* (*m*) a promissory note, made by the defendant, for payment of money to the plaintiff, on demand, dated the 2nd November, 1837, was, some time after April following, complained of to the defendant as wanting the words "or order;" who, thereupon, said, that the omission was his own; and those words were, with his consent, inserted. The alteration was held to be within the principle of *Kershaw* v. *Cox*, and to have been made

(*i*) 3 Esp. 57.
(*k*) *Kershaw* v. *Cox*, 3 Esp. 246.
(*l*) 1 Camp. 79; 9 East, 190.
(*m*) 11 A. & E. 31.

to correct a mistake merely. In *Viall* v. *Thompson* (*n*), precisely the same took place, which was attended with the same result.

"Or other" altered to "or order."

In an action between the original parties to a promissory note, the words "or order" appeared to have been substituted for "or other;" the attesting witness proved that he ought to have drawn the note "to order," but he could not say whether the alteration was made by him, or not. The Court, without intending to break in upon the rule, that the party seeking to enforce a bill or note, must account for any alteration appearing in it, were of opinion, that there was reasonable evidence given, from which the jury might infer that the alteration was made with the consent of the defendant, and in accordance with the original intention (*o*).

Date of the month altered.

A bill, written by the payee, payable 12 months after date, was discovered by the acceptor, on being presented for acceptance, to have been, accidentally, dated on the 3rd April, instead of the 3rd March; but he accepted it, as drawn, and, afterwards, with the consent of the drawer, it was altered, by the payee, to the 3rd March; the acceptor, on being informed of it, saying it was all right; it was held that the bill was not vitiated, the alteration being only to correct a mistake (*p*). In this case, the acceptor also altered his general acceptance, by inserting a place of payment, an objection to which Lord *Ellenborough* held to be without foundation, the stamp laws imposing no duty on an acceptance, *quâ* acceptance.

Date of the year altered.

In an action by an indorsee, against the acceptor of a bill, it appeared that the person to whom, as agent of both drawer and acceptor, the bill was delivered, to be handed over to the indorsee, perceiving that the date of the year was 1822, instead of 1823, and knowing it to be a mistake, altered the figure, for the purpose of correcting it, before handing it over. *Abbott*, C. J., held that the bill was not vitiated, the jury deciding that it was dated, originally, by mistake (*q*).

Form of instrument changed.

The decision in *Webber* v. *Maddocks* (*r*) proceeded upon the same grounds. There, *S. & R. Maddocks*, who were indebted to the plaintiff, in 110*l.*, agreed to give him a bill at four months, to be drawn by one, and accepted by the other; instead of which they sent a promissory note, as follows: "Four months after date I promise to pay to my own order 110*l.* for value received;"

(*n*) 3 Jurist, 1121.

(*o*) *Carter* v. *Tattersall*, 2 M. & G. 890; 3 Scott, N. R. 257.

(*p*) *Jacobs* v. *Hart*, 2 Stark. 45; 6 Man. & S 142.

(*q*) *Brutt* v. *Picard*, Ry. & M. 37.

(*r*) 3 Camp. 1.

which was signed by one, and indorsed by both; the plaintiff immediately objected to it, and it was, thereupon, altered into a bill, by striking out the words "I promise to," and subjoining a direction to the one who did not sign, by whom it was accepted.

Lord *Ellenborough* considered the stamp sufficient, every thing was *in fieri*, and the alteration might be considered as a correction, to fulfil the terms of the agreement.

Alteration in style of acceptors' firm.

A bill drawn on *S., C. & Co.* was accepted "*S. & C.*" and the address was altered, but when, did not appear, to "*Messrs. S. & C.*" so as to correspond with the acceptance; Mr. Justice *Littledale* was of opinion that the alteration, even if made after acceptance, was immaterial, and did not discharge the acceptors (*s*).

The same rule in other instruments.

Cole v. *Parkin* (*t*), relating to a bill of sale of a ship followed the same rule; the registry being incorrectly stated, the mistake was rectified, and the deed re-executed, and a new stamp was held to be not necessary.

Filling up a blank for payee's name.

The insertion, by the *bonâ fide* holder of a bill, of his name, in a blank left for that of the payee, is not an alteration affecting the liability of the drawer, who, by leaving the blank, undertook to be answerable for the bill when filled up (*u*). Nor does such alteration affect the liability of a party who accepts it in blank; no new stamp is necessary; the first stamp gave authority for the insertion (*x*).

A joint note altered without consent to joint and several to correct mistake, not allowed.

But an alteration, to correct a mistake, must be made with the consent of the parties. A joint and several note for 2000*l.* had been given by the Directors of a joint-stock company; 1000*l.*, only, was paid when the note became due; and it was agreed, that a fresh note, for that sum, should be given; which was done; but the second note was drawn and signed by the defendant, and all the other Directors, except one, as a joint note only; when the Secretary interlined the words "jointly and severally," without the knowledge of the defendant. On the note becoming due, the defendant was written to, informing him that it had been dishonoured, who replied, that it should receive early attention. It was held, that, by the alteration, the note was destroyed, and that the defendant's letter was not sufficient evidence of assent (*y*).

Alteration not to correct mistake.

In *Knill* v. *Williams* (*z*) a promissory note, payable to the plaintiff, or order, was, originally, expressed to be for value re-

(*s*) *Farquhar* v. *Southey*, Moo. & M. 14.

(*t*) 12 East, 471.

(*u*) *Cruchley* v. *Clarance*, 2 M. & S. 90.

(*x*) *Attwood* v. *Griffin*, 2 C. & P. 368; Ry. & M. 425.

(*y*) *Perring* v. *Hone*, 2 C. & P. 401; 12 Moore, 135.

(*z*) 10 East, 431.

ceived; but, the next day, it was, with the consent of the parties, altered, by adding the words "for the good-will of the lease of Mr. *F. Knill* deceased." It was held, that the addition constituted a new instrument, such addition not having been, originally, intended, and, therefore, not having been omitted by mistake. The alteration, in this case, was entirely an after-thought, but the note had not been negotiated; and, in later cases, an alteration by consent, in the date, has been permitted, under similar circumstances.

Consideration altered.

Addition made whilst *in fieri*.

An addition was allowed in *Wright* v. *Inshaw* (*a*), where the matter was *in fieri*. The defendant had agreed to become one of two sureties for a person borrowing money of a loan society, for securing which, the following note was signed by the principal, and the other surety, *viz.*: "On demand, we jointly, and severally promise to pay to Mr. *D. D.*, or order, 50*l.*, for value received;" after it was so signed, and before the defendant put his signature, the following words were added, "on account of club held at Mr. *D. D.'s*." It was held, by Mr. Justice *Coleridge*, that the note being incomplete when the addition was made, a fresh stamp was not necessary.

Alteration in date.

A bill was drawn on the 26th March, 1788, at three months, in favour of *W. & Co.* After acceptance, and whilst it was in the hands of *W. & Co.*, the date was, without the authority or privity of the acceptor, altered to the 20th March, by blotting out the top of the figure 6; and "23 June" was written over it, to show when it would become due. It was determined, in an action against the acceptor, that the bill was vitiated by the alteration (*b*). This was the case of an alteration under the most unfavourable circumstances; it was not only after acceptance, and after negotiation, but without consent. The rules established in *Pigot's case* (*c*), with respect to alterations in deeds, were, in this case, declared to be equally applicable to bills of exchange.

A bill drawn on the 2nd Sept., at 21 days after date, was, whilst in the hands of the drawer, altered, with the consent of the acceptor, to 51 days after date; on the 30th Sept. it was again altered, to 21 days, and the date changed to the 14th Sept.; it was determined that every alteration made a new instrument, and required a fresh stamp (*d*).

In this case the alterations were made with consent, and before negotiation. Subsequent decisions, permitting alterations with

(*a*) 1 Dow. N. R. 802.
(*b*) *Master* v. *Miller*, 4 T. R. 320; 5 T. R. 367.
(*c*) See "INSTRUMENTS."
(*d*) *Bowman* v. *Nicoll*, 1 Esp. 81; 5 T. R. 537.

consent, before negotiation, have been said to overrule this case; but this, perhaps, may be questioned. It does not appear when the first alteration in the bill took place; but it is certain, that when the second was made, the bill, as it originally stood, was due, according to the tenor; the stamp may, therefore, with propriety, be said to have been exhausted; and, certainly, the renewal would be a new bill.

The case of *Cordwell* v. *Martin* (*e*), before alluded to, was that of two persons exchanging acceptances of bills, drawn by each on the other, at certain dates, but who, before passing the bills to other parties, and 20 days after the drawing, agreed to procrastinate the payment, by post-dating them. It was held, in an action by an indorsee of one of the bills against the acceptor, that the delivery of the bill to the acceptor, and the re-delivery of it to the drawer, for a valuable consideration, (as the exchange of acceptances is,) was a negotiation; and that the alteration could not be made without a fresh stamp. In this case, that of *Wilson* v. *Justice* (*f*) was referred to, where Lord *Kenyon* held, that the alteration in a bill, by making it payable at 12 months, instead of 9, by consent of all parties, after it had been a fortnight with the payee, rendered a new stamp necessary.

A bill at two months, drawn on the 1st August, payable to the order of the drawer, and accepted, was, after being kept by the drawer for 20 days, and before he, in any way, dealt with it, altered, in the date, to the 21st August; to which alteration the acceptor, on being informed of it, consented, thanking the drawer for making it; a new stamp was held to be necessary; the alteration not being made to correct a mistake; it was not competent to the parties to alter their intention, and make a new instrument, without a fresh stamp (*g*).

An accommodation bill, dated 10th March, was accepted; but, before it was issued by the drawer, the date was altered to the 16th March; Lord *Ellenborough* held, that the bill, with the original date, was a valid and complete instrument, framed according to the intention of the parties, and could not, afterwards, be altered, even with their consent; the alteration was tantamount to the drawing of a new bill (*h*).

But in *Johnson* v. *Garnett* (*i*), which was an action by an indorsee of a bill, drawn by the defendant, upon one *Gibb*, dated

(*e*) Page 177, *ante*.
(*f*) Bayl. on Bills, 24.
(*g*) *Bathe* v. *Taylor*, 15 East, 412.
(*h*) *Calvert* v. *Roberts*, 3 Camp. 343.
(*i*) 2 Chitty, 122.

8th June, and accepted by the latter; and which date was, after acceptance, altered by the defendant to the 18th June; Lord *Ellenborough* left it to the jury, whether the acceptor was not the creature of the drawer, who made the alteration as agent of the acceptor; and they so found, returning a verdict for the plaintiff; and the Court refused a rule for entering a nonsuit.

Johnson v. *Gibb* (*k*) seems to have been an action, on the same bill, against the acceptor, in which the plaintiff having been nonsuited, the Court granted a new trial.

Outhwaite v. *Luntly* (*l*) was an action by the indorsee of a bill, against an indorser. The bill had been indorsed over by the drawer, and left for acceptance, when the drawee, before he accepted it, altered the date from the 5th to the 15th March, without the consent of the drawer. Lord *Ellenborough* held, that before acceptance the bill was perfect, the drawer might have been sued upon it, and any material alteration of it in that state, rendered it void; besides, consent would not justify the alteration, with a view to the stamp laws, after the bill had been negotiated.

A bill drawn on the 5th July, and delivered to the payee, was presented, for acceptance, to the defendant, who wished the date to be altered to the 10th July, which was done, without any communication with the drawer. Lord *Ellenborough* refused to admit it; there had been no mistake; when the date was altered, a new bill was drawn, which could not be done without a new stamp (*m*). In this case the bill had been passed to the payee. His lordship alluded to the case of *Paton* v. *Winter* (*n*), in which no objection was taken on the stamp laws, although that was the only objection that could have been taken, with effect, and which case was, therefore, not worth reporting.

But in *Leykariff* v. *Ashford* (*o*), a bill, found by the jury to be altered in the date, with the consent of the acceptor, whilst it was in the hands of the drawer, was received. From the circumstance of its being left to the jury to say whether the alteration was with the acceptor's consent, the bill would appear to have been altered after acceptance; but the evidence merely went to show that it was before negotiation, it being, also, proved that the acceptor wrote upon it, at the *same time with the acceptance*, a memorandum when it would become due, according to the alteration.

(*k*) 2 Chitty, 123.
(*l*) 4 Camp. 179.
(*m*) *Walton* v. *Hastings*, 1 Stark. 215; 4 Camp. 225; 2 Chitty, 121.
(*n*) 1 Taunt. 420.
(*o*) 12 Moore, 281.

In *Downes* v. *Richardson* (*p*), an accommodation bill was originally dated 6th March, and was accepted, and indorsed over; on the 10th April it was delivered to a stranger, by the agent of one of the parties, in payment for goods; at which time the date had been altered to the 16th March; and, whilst in the hands of the stranger, the alteration was assented to by the acceptor. The Court considered, that this would have been a valid instrument, at common law, against the acceptor, having been altered with his consent; but the difficulty arose from the Stamp Act; it was held, however, that the bill, being an accommodation bill, was *in fieri*, and utterly unavailable, as a security, until issued to some real holder for valuable consideration, the original parties having no right of action *inter se;* and that the acceptor having assented to the alteration, it was good as against him, and that he could not now object to it.

But *Abbott*, C. J., had, previously to the last case, in *Johnson* v. *The Duke of Marlborough* (*q*), which was an undefended action, by the indorsee, against the acceptor of a bill, the date of which had been altered, by the defendant, from the 29th December, 1816, to 29th January, 1817, required proof that the alteration was made before acceptance; observing, that if it was not, the bill was void for want of a new stamp; *primâ facie* proof was given, and a verdict was returned.

In *Upston* v. *Marchant* (*r*), where a bill, on being presented for acceptance, was altered in the date, from the 21st to the 31st December, by the drawer, at the request of the acceptor, no question seems to have been raised as to the effect of such alteration, except as regarded the *amount* of the Stamp Duty; it would appear to have been taken for granted that the validity of the bill was not affected.

Alteration in date of payment.

In *Kennerly* v. *Nash* (*s*), the defendant, on a bill, drawn on him at three months, for a debt due from him, being presented for acceptance, requested the drawer to alter it to four months, which was done, and the defendant then accepted it. It was held that no new stamp was necessary. Here, the transaction may be said to have been *in fieri*.

A promissory note drawn payable on demand, was handed, after being signed, to a third person, the payee being present, but, before it was given to the payee, it was altered, by consent of all parties,

(*p*) 5 B. & Ald. 674; 1 D. & R. 333.

(*q*) 2 Stark. 313.

(*r*) 2 B. & C. 10; 3 D. R. 198.

(*s*) 1 Stark. 452.

and made payable at one month's date; this was held, by Lord *Tenterden,* to be all one transaction; the note could not be considered to be issued when the alteration was made; a new stamp was not, therefore, required (*t*).

In an action against the acceptor of a bill for the accommodation of the drawer, the defendant pleaded an alteration after acceptance, without consent. The bill was, originally, drawn for two months, but after acceptance, and before it was circulated, it was altered to five months; the jury being satisfied that the alteration was with consent, and as the stamp was good for five months, and higher than was requisite for two, they found for the plaintiff (*u*).

Where a bill, after it had been accepted, and before it was delivered to the drawee, was altered by a third person, Mr. Justice *Coltman* left it to the jury to say, whether the alteration was made by such person with the consent, or as the agent of the acceptor; as, in either case, the latter would be liable (*x*).

Payee's name altered by one of the drawers.

In a note made by *C. & M.*, the name of the payee was altered, at *M.'s* request, and Mr. Baron *Foster* (in Ireland), having consulted Mr. Justice *Ball,* was of opinion that the alteration was material, and, being made after the bill had passed from the hands of *C.*, a fresh stamp was required (*y*).

Addition of party to a

A note was given by a person, and another, "as his surety," to a creditor of the former; after the creditor's death, a third party added his signature to it, as a further security; both sureties paid their moieties; and the first brought his action against the principal, to recover the moiety paid by him; it was contended that the note was vitiated by the alteration; but it was held, that it had not the effect of a material alteration; it was, merely, an addition, which had no effect, and did not, therefore, avoid the note, so as to prevent the plaintiff from recovering (*z*).

This case was commented upon by Mr. Serj. *Byles,* in *Gould* v. *Coombs* (*a*); who observed, that it was hastily decided, and was not law; a similar point was raised in that case, but not determined.

Alteration in acceptance.

The acceptance is a material part of a bill, and an alteration therein may destroy the bill; but that result can, scarcely, be considered as accruing, in any case, from the Stamp Acts.

(*t*) *Sherrington* v. *Jermyn*, 3 C. & P. 374.

(*u*) *Barker* v. *Malcolm*, 7 C. & P. 101.

(*x*) *Whitfield* v. *Collingwood*, 1 Car. & K. 325.

(*y*) *Connor* v. *Fitzsimon*, Irish Cir. Rep. 106.

(*z*) *Catton* v. *Simpson*, 8 A. & E. 136; W. W. & H. 157; 3 Nev. & P. 248.

(*a*) *Ante*, p. 161.

In *Marson* v. *Pettit* (*b*), Lord *Ellenborough* held, that the addition of the words "*Prescott & Co.*," written by the drawer under the name, and without the consent of the acceptor, did not vitiate the bill. Probably, in this case, as suggested by Lord *Ellenborough*, himself, in *Tidmarsh* v. *Grover* (*c*), the additional words were, merely, written by way of memorandum, and not as part of the acceptance; for, in the latter case, where the drawer, without the acceptor's consent, substituted, in the acceptance, the words "*Esdaile & Co.*," for "*Bloxham & Co.*," it was determined that the acceptor was discharged.

Cowie v. *Halsall* (*d*), and *Macintosh* v. *Haydon* (*e*), were cases in which it was, also, held, that an alteration, by the drawee, in a general acceptance, by introducing a place of payment, without the acceptor's consent, vitiated the bill. And, in *Sparkes* v. *Spur* (*f*), where, after a bill had been accepted, generally, some person introduced the words "at *Fry & Co.'s*," *Abbott*, C. J., nonsuited the plaintiff, on the authority of *Macintosh* v. *Haydon*; but the Court, after much discussion, granted a new trial, on payment of costs; Lord *Tenterden* observing, that the plaintiff would then have an opportunity of putting the question upon record, by tendering a bill of exceptions; that was the utmost the Court could do, as the other Judges were strongly inclined to think the nonsuit quite right. But in *Jacobs* v. *Hart* (*g*), *Stevens* v. *Lloyd* (*h*), and *Walter* v. *Cubley* (*i*), it was otherwise determined; the alteration being, in each case, made by the acceptor, or with his consent.

In *Semple* v. *Cole* (*k*), the defendant, in accepting the bill, left a space, contrary to his habit, between the word "accepted" and his signature, which was, afterwards, filled up by a stranger, with a place of payment; and the question was, on whom lay the onus of proving how, and when, the alteration was made; the Court held that there was evidence that the bill was, originally, accepted as it then appeared, or, that the space was purposely left to be filled up.

Acceptance in blank altered.

If a party write his name across a piece of blank stamped paper, thereby authorizing a general acceptance of a bill, to be afterwards

(*b*) 1 Camp. 82, note.
(*c*) 1 M. & S. 735.
(*d*) 4 B & Ald. 197.
(*e*) Ry. & M. 362.
(*f*) Chitty's Stamp Laws, 3rd ed. 38.
(*g*) 2 Stark, 45.
(*h*) Moo. & M. 294.
(*i*) 2 C. & M. 151; 4 Tyr. 87.
(*k*) 3 Jurist, 268.

drawn, and the drawer add words, making it an acceptance payable at a particular place, the contract is vitiated (*l*).

Acceptance cannot be retracted.

An acceptance of a bill cannot be retracted; if it can be proved to have been written, the liability continues, although the words be erased (*m*).

Bill drawn abroad, altered in England.

A bill, drawn in Paris, was accepted in England, for a less sum, and was altered, to make the amount for which it was drawn correspond with the acceptance; it was objected that it was a bill drawn in England, and, therefore, should have been stamped; it was held to be an alteration with consent; and that the party who alleged the alteration to have been made in England was bound to prove it; it was not to be presumed (*n*).

As to pleading the alteration.

Formerly, it was not necessary that the alteration in a bill or note, any more than the want of a stamp, should be pleaded; advantage might have been taken of the circumstance under the plea of non-acceptance; this rule has, however, been much modified, having, of late, undergone material change, as will appear by the more recent cases; still, as far as the stamp duty is concerned, it would seem that no special pleading is required in this respect, but that advantage may now, as formerly, be taken of an alteration without pleading it, where, by such alteration, a new stamp has become necessary.

In the case of *Bradley* v. *Bardsley* (*o*), where the defendant pleaded an alteration in a note, without a re-stamping, it was said, by Mr. Baron *Parke*, that if the stamp laws could be pleaded in bar of an action, it could only be in cases where the instrument was not capable of being made good, by being stamped before trial; and it was held that the plea was insufficient, in not showing that it was one in which the note was not permitted, by law, to be stamped.

That it need not be specially pleaded, was held in *Cock* v. *Coxwell* (*p*), where a bill was altered in the date, after acceptance.

And also in *Calvert* v. *Baker* (*q*), where the alteration was in the acceptance, by adding the words "payable at *Williams, Deacon & Co.*," without the acceptor's knowledge. Lord *Abinger* said, "The plea is sufficient; the defendant says he did not accept

(*l*) *Crotty* v. *Hodges*, 4 M. & G. 561; 11 L. J. R. (N. S.) C. P. 289 3 Scott, N. R. 221.

(*m*) *Thornton* v. *Dick*, 4 Esp. 269.

(*n*) *Hamelin* v *Bruck*, 15 L. J. R. (N. S.) Q B. 343; 9 A. & E. (N. S.) 306.

(*o*) 13 L. J. R. (N. S.) Exch. 115.

(*p*) 2 C. M. & R. 291; 4 Dowl. 187.

(*q*) 8 L. J. R. (N. S.), Exch. 40; H. & H. 404.

the bill in manner and form, and you produce a bill with a different acceptance from that which he made." *Parke*, B.: "The declaration suits the altered form, as well as the original acceptance; the plaintiff does not produce any bill which the defendant has accepted."

Plea of alteration defective.

But in *Langton* v. *Lazarus* (*r*), which was an action by the indorsee, against the acceptor of a bill, the defendant pleaded, that before the bill became due, and whilst it was in full force and effect, the date was altered by the drawee; to this the plaintiff demurred, assigning for cause, that the plea did not allege that the alteration was made after acceptance; and the Court held that the plea could not be sustained; but gave liberty to amend by supplying the deficiency.

Proof of plea defective.

And in *Clarke* v. *Bell* (*s*), an action by the indorsee against the drawer, where the defendant pleaded an alteration of the date after the note had been completely made, and negotiated, and indorsed by him, it was held, that the plea was not proved by showing that the alteration was made by the acceptor, without the consent of the defendant, after he had indorsed his name, but before the bill had been delivered over; the term, "indorsing," meaning not only writing upon the back of the bill, but giving it over with the intention of making it negotiable.

Alteration must be pleaded where the stamp is not affected.

In *Mason* v. *Bradley* (*t*), in which the defendant was sued as the maker of a joint and several note, he pleaded that he did not make the note, *modo et formâ;* it was held that the defence, that the note had been vitiated, was not available under this plea; the fact should have been specially pleaded. In this case, the defendant signed the note with six other persons, as sureties, the name of one of whom was cut off. *Parke*, B., said it would, probably, turn out that the note was void; no objection was taken as to the stamp, and the note agreed with the declaration; there was no variance; the defence should have been specially pleaded according to *Hemming* v. *Trenery* (*u*); in *Calvert* v. *Baker*, the Court did not appear to have adverted to the circumstance that the alteration did not require a new stamp: "I am under an impression that this Court pointed out that distinction a few terms ago, and expressed a doubt as to the authority of that case to that extent. I do not think that case can be supported, where the alteration is not such as to cause

(*r*) 5 M. & W. 629.
(*s*) 12 Jurist, 421.
(*t*) 11 M. & W 590; 1 Dow. & L. 380.
(*u*) 9 A. & E. 926; 1 P. & D. 661; the case of a guarantee, afterwards interpolated.

a variance between the declaration and the instrument, or to raise an objection to the stamp; it is only applicable where the alteration is such as to put an end to existing liabilities; this is a defence of a different nature, which, since the new rules, ought to be specially pleaded" (*x*).

In *Parry* v. *Nicholson* (*y*), which was an action by an indorsee against the acceptor, the plaintiff declared that *J. T.* on a certain day stated, (22nd March,) made his bill, &c., without specifying any date. The defendant pleaded that he did not accept the bill mentioned, *modo et formâ*. At the trial, the bill, on being produced, appeared to have been altered from some other date, to that of the day mentioned in the declaration, as the day, not of the date of the bill, but of the making; in other respects it corresponded with the declaration. It was contended that the bill was void, but the defendant's counsel insisted that the defence ought to have been pleaded, and was not available under the plea of *non accepit*; the learned Judge thought a special plea was not necessary, and the jury found for the defendant. On a rule for a new trial, *Parke*, B., said: "The plaintiff is bound to account for the alteration, if called upon to do so by the issue raised in the cause; here the question was, whether the defendant accepted such a bill as was alleged in the declaration, namely, a bill of a particular kind, payable at a certain time, and of a certain amount; the date is immaterial; it is plain that he did accept such a bill." On counsel referring to the case of *Calvert* v. *Baker*, as showing that a defendant might avail himself of an alteration in a bill, without pleading specially, the learned Baron observed, "The case of *Calvert* v. *Baker* is not an authority to that extent, and can only be supported, as to that part of it, on the ground, that the alteration, by making the bill a new instrument, required a fresh stamp. A special plea would not be necessary, if the alteration were such as to create a variance between the averments in the declaration, and the instrument when put in evidence; but that is not the case here, for the date of the bill is immaterial, and whether it was the 2nd or 22nd of March, a fresh stamp would not be necessary." Mr. Baron *Alderson* said, "A defendant cannot avail himself of the alteration on the ground of its creating a variance, or rendering a new stamp necessary; and so, the instrument being bad at common law, that defence ought to have been specially pleaded. Before the new rules the defence

(*x*) See *Gould* v. *Combs*, 9 Jurist, 494.

(*y*) 14 L J R (N. S.), Exch 119; 2 Dow. & L. 640.

was, in fact, pleaded under *non assumpsit*." On counsel observing that *Calvert* v. *Baker* was supported by other authorities, Mr. Baron *Parke* added, "there are no such authorities since the case of *Hemming* v. *Trenery*, and we have twice acted upon that decision, *viz.*, in *Mason* v. *Bradley*, and *Davidson* v. *Cooper*" (*z*).

See *Smith* v. *Lord* (*a*), as to alleging the date of a note in the declaration, and the necessity for proving the precise day.

Accounting for alteration.

Subject to the qualification before mentioned, it is incumbent on the party seeking to establish a bill of exchange, or promissory note, to prove the circumstances under which any alteration appearing therein was made; and on such proof being given, it is a question of law for the Judge, whether it can be received in evidence as a valid instrument or not; but it would seem that the Judge may take the opinion of the jury as to the fact of an alteration having been made, and under what circumstances.

The Court will not presume that an alteration was properly made.

In *Johnson* v. *Duke of Marlborough* (*b*), where the date of a bill had been altered, *Abbott*, C. J., required the plaintiffs to prove when the alteration was made; it was argued, that, in the absence of evidence to the contrary, it was to be presumed to have been properly made, but his Lordship said he would presume neither one way nor the other; and that unless it could be proved that the alteration was prior to the acceptance, the bill was void for want of a new stamp.

In *Henman* v. *Dickenson* (*c*) it was, again, determined, that it was incumbent on the party producing the bill, to show when, and under what circumstances, it was altered.

Whether altered by consent left to the jury.

Where the date on a bill, "20 April," was written on an erasure, and a witness (for the defendant) proved that the date was, originally, 28 January, but that it was altered before the bill was negotiated; and the words, "due July 23rd," were written on it by the acceptor, at the same time with the acceptance; the Judge left it to the jury to say, whether or not the alteration had been made with the defendant's consent; and they found that it was, and returned a verdict for the plaintiff. On a motion for a new trial the Court considered that there was no ground for disturbing the verdict, the case had been properly left to the jury (*d*).

Whether altered, and

And in *Bishop* v. *Chambre* (*e*), the date of a note appearing to be altered, the word "May" being in different ink from the

(*z*) "INSTRUMENTS."
(*a*) 14 L. J. R. (N. S.), Q. B. 112.
(*b*) 2 Stark. 313.
(*c*) 5 Bing. 183.
(*d*) *Leykariff* v. *Ashford*, 12 Moore, 281.
(*e*) 3 C. & P. 55; Moo. & M. 116; Dans. & Ll. 83.

when, left to the jury.

rest, and a portion of the paper being cut off, Lord *Tenterden* said, it was a question for the jury, whether the month was in a different writing from the rest, and whether the note had been altered after it was made and delivered, and had become a perfect instrument; as, if it had, it would require a new stamp, although altered with consent; that it, certainly, lay on the plaintiff to account for the suspicious form, and obvious alteration of the note; they were to judge from inspection, and if they thought the alteration was made after its completion, the verdict must be for the defendant. The jury found for the defendant. It seems that proof of an admission of a debt was given, and that the note was referred to for the purpose of ascertaining the amount; and, on motion, the Court held that it might be so used, and a verdict was entered for the plaintiff. The Court, however, in *Jardine* v. *Payne* (*f*), considered, that by their decision they overruled *Bishop* v. *Chambre*; holding, that an unstamped, or improperly stamped bill could not be read to the jury; it might be looked at by the Court, for the purpose of seeing whether it required a stamp, but with that the jury had nothing to do.

In an action against the acceptor, the words, "payable at," &c., were not written by the defendant, and the bill appeared, also, to have been altered as to the term; it was left by the Judge (*Tindal*, C. J.,) to the jury, to say, whether the bill had been altered, as last stated, and if they thought it had, there was an end of the case. The alteration in the acceptance was made after it was signed, though exactly when, it was not shown; it was, also, left to the jury to say, whether this alteration was made without consent, as, if it was, one was as bad as another (*g*).

Acceptance *when* altered left to the jury.

Lord *Lyndhurst*, in *Taylor* v. *Moseley* (*h*), left it to the jury to say, whether, under the circumstances proved, a bill, which appeared, on inspection, to have been altered, by introducing, between the word "accepted," and the acceptor's name, the words "payable at *Messrs. Cockburns*," which were not in the acceptor's handwriting, had been so altered before, or after acceptance.

But the jury are not to decide on inspection; the plaintiff must give proof when the alteration was made.

In *Knight* v. *Clements* (*i*), in which a bill, drawn at two months after date, and stamped for that period, appeared to have been altered from three months, the Court held, that it was incumbent on the plaintiff to prove that the alteration was made in due time, and that the question was not one for the jury, on inspection of

(*f*) 1 B. & Ad. 663.

(*g*) *Desbrow* v. *Weatherley*, 6 C. & P. 758.

(*h*) 6 C. & P. 273.

(*i*) 8 A. & E. 215; 3 Nev. & P. 375; W. W. & H. 280.

the bill, merely. In *Bishop* v. *Chambre*, Lord *Tenterden* allowed the jury to look at the bill, to see if any alteration had been made, and they being of opinion that there had, he decided against the party producing it, for want of proof.

Improperly left to jury without evidence.

In *Clifford* v. *Parker* (*k*), an action against the acceptor, the bill appeared to have been altered from five months to two; it was sufficiently stamped for either; and the under-sheriff, no evidence accounting for the alteration being given, placed the bill in the hands of the jury, telling them that it was for them to say whether, in their opinion, the alteration was made before, or after acceptance; but the Court of Common Pleas, on a rule for a new trial, said that it was incumbent on the plaintiff to give some evidence of the circumstances under which the alteration took place, and granted a new trial.

Where the issue is on the indorsement only, an alteration need not be accounted for.

But, in an action between indorsees, where the issues tendered were on the indorsement alone, it was determined not to be incumbent on the plaintiff to account for an apparent alteration in the date of the bill, which, as set out in the declaration, was admitted on the record (*l*).

Admissibility of evidence, a question for the Judge, who should not wait for the defence, when evidence objected to.

In assumpsit, by the indorsee against the drawer of a bill, the plaintiff proposed, at the trial before the under-sheriff, to read the bill, which was stamped as a foreign bill; but the defendant's Counsel objected, on the ground, that although purporting to be drawn in Dublin, the bill was, in fact, drawn in London; the under-sheriff, however, as the bill was not objectionable on the face of it, received it. For the defence, evidence was given, to show, that, at the date of the bill, the drawer was in London; and it was left to the jury to say, whether it was drawn in London or Dublin, who found for the plaintiff; leave being given to move to enter a nonsuit, if the Court should be of opinion that the evidence ought to have been received in the first instance. On a motion made accordingly, the Court said, that the question was one entirely for the Judge; it was he who was to decide, before a document was read, whether or not the objection to it was valid, the evidence upon this point was to satisfy his own mind; and, when the objection was stated in this case, he should have gone into the question, and not have permitted the jury to give any opinion upon the point, whether or not it was admissible, which, leaving the whole to them amounted to (*m*).

(*k*) 2 M. & G. 909; 3 Scott, N. R. 233.

(*l*) *Sibley* v. *Fisher*, 7 Ad. & E. 446.

(*m*) *Bartlett* v. *Smith*, 11 M. & W. 83; 7 Jurist, 448.

Evidence cannot be given as to alterations in other bills.

In an action by an indorsee against the acceptor of a bill for 75*l.* it was alleged, that it was given for 55*l.*, and it was proposed to ask one of the witnesses for the defence, as to ten other bills, alleged likewise to have been altered, but Lord *Lyndhurst* refused to receive the evidence; it was trying other issues, which the party was not prepared to meet (*n*).

Right of objecting not affected by consent to a Judge's order for admitting an instrument.

The right of objecting to the want of a proper stamp, is not affected by a consent to a Judge's order for the admission of the instrument, "all just exceptions to the admissibility of the document, as evidence in the cause," being saved (*o*); although the party consenting thereby precludes himself from objecting on account of an erasure (*p*).

A security given for the amount of a bill, in ignorance that the bill was vitiated, is not available.

Where a promissory note, as a security, was given by the indorser, to the holder of a bill, for the sum therein mentioned, which bill had, at the time the note was given, been altered, without the knowledge and consent of the indorser, who when he gave the note, was ignorant that his liability on the bill had been affected, and who in an action on the note, pleaded that he gave it without knowledge of the alteration, and conceiving that he was liable on the bill, the Court held the note to have been given without consideration, and that the plea, although it did not negative all means of knowledge, was sufficient (*q*).

Bill on old stamp.

Doctrine of relation.

The dies for bills were, under the 3 & 4 Will. IV. c. 97, changed on the 30th Nov. 1833; and any bill, drawn after that day on an old stamp, was, by that act, to be deemed to be written on unstamped paper. A bill, on an old stamp, was dated in August, 1835; but, in an action against the acceptor, it was proved that the acceptance was written before the change of die; and it was contended, that the bill should have relation to the time of the acceptance; but the Court held, that, however the doctrine of relation, (in no instance to be favoured,) might apply to the case of the drawer, who signs his name to a blank piece of stamped paper, or to bills drawn in blank (*r*), it was substantially different as to a blank acceptance (*s*).

Joint-stock banks.

JOINT-STOCK BANKS.—The removal of certain restrictions, originally imposed in favour of the Bank of England, having esta-

(*n*) *Thompson* v. *Moseley*, 5 C. & P. 501.

(*o*) *Vane* v. *Whittington*, 1 C. & M. 484; 2 Dowl. 757.

(*p*) *Poole* v. *Palmer*, 1 C. & M. 69.

(*q*) *Bell* v. *Gardner*, 1 Dow. N. R. 691.

(*r*) See *Snaith* v. *Mingay*, *ante*, page 166.

(*s*) *Abrahams* v. *Skinner*, 12 A. & E. 763; 4 P. & D. 358.

blished a connexion between the Stamp Office and Joint-stock Banks, it may be considered proper to refer to those cases to which this modern system of banking has given rise, although they have but little, if anything, to do with the stamp duties. And, first, it may be noticed, that the enactment, whereby it was declared not to be lawful for any corporation, or for any persons, exceeding six in number, united in covenants or partnership, to borrow, owe, or take up money on their bills or notes, payable at less than six months after date, applies to bankers only (*t*)

The restriction as to the number of partners applies to bankers only.

In the *Bank of England* v *Anderson* (*u*), the Court of Common Pleas, on a case sent from the Rolls, was of opinion that the London and Westminster Bank, being a bank consisting of more than six persons, could not, lawfully, accept a bill payable at less than six months from the time of such acceptance, regard being had to the 3 & 4 Will. IV. c. 98, and the other Acts, in force, respecting the Bank of England.

Joint-stock Banks cannot accept bills payable at less than six months from the time of acceptance.

The return made to the Stamp Office, of the name of a public officer entitled to sue on behalf of the Company, is not the only proof of the appointment of such officer, other evidence may be given of the fact (*x*).

Proof of public officer.

See *Esdaile* v. *Maclean* (*y*) as to the sufficiency of the description of a public officer in a declaration.

Description in pleadings.

It was objected that an action could not be maintained in the name of an officer, where the return contained no description of the office held, and where the names only, and not the places of abode of the proprietors, were, in some cases, given; but the Court held that it was sufficient to state the names and places of abode of the partners, as they appeared on the Company's books; and *non constat* that this was not the case in the present instance, [the books were not produced, nor called for]; that if it were otherwise, it would be going a great way to say, that the omission, in any one instance, would make the return void. And, as regards the officers, it did not appear that they had any other title than that of public officers (*z*).

Alleged defective return, as to officer.

In an action against a joint-stock banking company, in the name of their officer, the defendant pleaded that he was not the public

(*t*) *Wigan* v. *Fowler*, 1 Stark. 459; *Broughton* v *The Manchester Water Works Company*, 3 B. & Ald. 1; *Perring* v. *Dunstan*, 1 R. & M. 426.

(*u*) 2 Hodges, 294.

(*x*) *Edwards* v. *Buchanan*, 3 B. & Ad. 788; *Rex* v. *James*, 7 C. & P. 553; *Rex* v. *Beard*, 8 C. & P. 143.

(*y*) 15 M. & W. 277.

(*z*) *Armitage* v *Hamer* (*Huddersfield Banking Company*), 3 B. & Ad. 793.

officer as alleged. The return to the Stamp Office was filed in March, 1841, and it was objected, that it was not evidence of the defendant being the officer in November, 1842, when the action was commenced; but the Court held that it was. An objection was, also, taken to the sufficiency of the return, the affidavit describing the deponent, (the defendant,) only as a Member and Director; but the Court were of opinion that, coupling it with the return itself, in which the defendant was described as a public officer, there was sufficient evidence that the affidavit was made by the public registered officer, as directed by the 7 Geo. IV. c. 46. A point was stated, that it ought to have been shown, that the return was filed between the 28th February and the 25th March, but counsel reserved the argument on it for another case, the Court observing, that they would not prejudice the argument by giving an opinion, but that it would, probably, turn out that the Act was merely directory (*a*).

As to the time for making the return.

The Act only directory.

This latter point, with others, has since been disposed of in the following case :—

Sufficiency of jurat to the affidavit.

The date of the jurat is the date of the return.

To prove an existing partner in a joint-stock banking company, a certified copy of the return, deposited at the Stamp Office, was produced. The jurat to the affidavit, verifying the return, was as follows :—"Sworn before me at the Town and County of Southampton, 9th November, 1839.—Joseph Lomer." The plaintiff proved that Mr. Lomer was a Magistrate. The return had no other date than that in the jurat, nor was any evidence given of the time when it was delivered at the Stamp Office; it was, therefore, objected to, but the learned Judge received it; and the Court, afterwards, held that it was properly received. As to the jurat, it being proved that the affidavit was sworn before a person having jurisdiction, it was sufficient. With regard to the time for delivering the return; the *date* of the account or return was the material point of time. *That* was to fix who were, and who were not, members. No *other* date, for any material thing to be done, was any where alluded to: and *whenever* it might be returned to the Stamp Office, the only material date, (as the 6th sect. of the Act 7 Geo. IV. c. 40, declared,) was *that* when the account or return was made, which was when the officer verified it, and could be no other. The Court did not, therefore, think that the circumstance of the Commissioners of Stamps, (who were merely passive,)

The returns not evidence except

(*a*) *Steward* v. *Dunn*, 12 M. & W. 655; 1 Dow. & L. 642; 13 L. J. R. (N. S.) Exch. 324; 8 Jurist, 218.

not having been shown to have received the returns within the time specified, ought to invalidate them: but that the clause in question was to be considered as directory only (*b*).

under the statute.

Although the returns, if regular, become statutory evidence, yet if they are not delivered according to the Act of Parliament, the question of their admissibility, as evidence, and the value of the evidence if admitted, must be tried by the ordinary rules. See *Prescott* v. *Buffery* (*c*), where *Tindal*, C. J., rejected the returns as not having been filed in due time; and where the Court held, that they were properly rejected, as, independent of the statute making them evidence, they amounted only to declarations by the Directors, behind the backs of both plaintiff and defendant. See also *The Bank of England* v. *Johnson* (*d*), where, there being no proper return, the Court held that the question, as to a party sought to be charged under a judgment against the public officer, was a shareholder or not, was matter to be tried by *scire facias*.

An action does not abate by the death of the registered public officer (*e*). Nor, in a Chancery suit, is a change of the officer supplemental matter (*f*).

(*b*) *Bosanquet* v. *Woodford*, 5 A. & E. (N. S.), 310.
(*c*) 6 M. G. & S. 41.
(*d*) 18 L. J. R. (N. S.) Exch. 238.
(*e*) *Todd* v. *Wright*, 16 L. J. R. (N. S.) Q. B. 311.
(*f*) *Butchart* v. *Dresser*, *ib.* Chan. 198.

Bill of Lading. Charter Party. Certificate or Debenture for Drawback.

5 W. & M. c. 21.
9 Will. III. c. 25.
9 Anne, c. 23.

Stamp duties were granted by the two former Acts, on Charter-parties; and by the third-mentioned Act, on notes, or bills of lading for goods to be exported, and on certificates or debentures, for drawing back any Customs or Duties.

Penalty for signing any debenture or bill of lading on unstamped paper, 10*l.*

Sect. 27.—If any officer of Customs sign any certificate or debenture, not duly stamped; or if any person write, engross, or print, or cause to be written, &c., any certificate, or debenture, note, or bill of lading; or sign such bill of lading, before the same is duly stamped, he shall forfeit 10*l.* with full costs of suit; and such officer shall lose his office, and be incapable to hold the same. And if any such certificate, debenture, bill or note of lading, be written contrary to this Act there shall be due, (over and above the duties,) the sum of 5*l.*; and the same shall be unavailing until such penalty and duty be paid, and a receipt be given for the same. See further provision in 5 & 6 Vict. c. 79.

Public officers to produce books.

Sect. 28.—All public officers having in their custody any such debentures, or any public books, &c., to produce the same to any officer of Stamp Duties for inspection. See "Public Officers."

5 Geo. III. c. 35.

Sect. 10 —The duties on deeds granted by the 12 Anne and 30 Geo. II., to be payable on charter-parties.

What shall be deemed a charter-party.

Sect. 11.—Every deed, instrument, note, memorandum, letter, or other minument or writing, between the captain, or master, or owner of any ship or vessel, and any merchant, trader, or other person, in respect to the freight, or conveyance of any money, goods, wares, merchandise, or effects, laden, or to be laden on board of any such ship or vessel, shall be deemed and adjudged to be a charter-party.

Other duties were granted by various Acts passed from time to time; and by the 44 Geo. III. c. 98; 48 Geo. III. c. 149; and 55 Geo. III. c. 184, the duties at those times, respectively, in existence, were repealed, and others granted in lieu.

6 Geo. IV. c. 41.

Drawbacks. Present duties on debentures.

By this Act the duties on certain customs and excise bonds, and on certificates, or debentures for receiving drawbacks, were repealed, and others granted in lieu.

5 & 6 Vict. c. 79.

On charter-parties and bills of lading.

By this Act the duties on charter-parties, and bills of lading (with others), were repealed, and reduced duties granted in lieu. See Table.

Sect 21 —The Commissioners of Stamps and Taxes, or any of their officers, shall not stamp or mark any vellum, parchment, or paper, upon which any bill of lading, or any charter party, or any agreement, contract, memorandum letter, or other writing by this Act chargeable with duty as a charter party, shall be engrossed, written or printed, under any pretence whatever, after the same shall be executed or signed by any party, except as herein is provided, and if any person shall make, or sign, any bill of lading, which shall be engrossed, printed, or written, or partly engrossed, or written, and partly printed upon vellum parchment, or paper, not duly stamped according to law, he shall forfeit 50*l* Provided, that if any charter party be brought to the Head Office, or to any proper officer to be stamped, within fourteen days after the same shall bear date, and shall have been first executed, or signed by the party who shall have first executed, or signed the same, the Commissioners may and they are required to cause the same to be stamped upon payment of the duty thereon, without any penalty, and if the same be brought to the Head Office to be stamped, at any time after the expiration of such fourteen days and within one calendar month after the same shall bear date, and shall have been first executed, or signed as aforesaid, the Commissioners may and are required to cause the same to be stamped, upon payment of the duty, and 10*l*, by way of penalty

No bill of lading to be stamped, nor, except as here provided, any charter party

Charter-parties may be stamped within 14 days without penalty

After 14 days, and within a month, on payment of 10*l*

5 & 6 Vict c 82

Sect 34 —The same provision as the foregoing is herein contained as to Bills of Lading and Charter parties in Ireland

The same in Ireland

7 Vict c 21

Sect 8 —The duties on bonds, imposed by the 6 Geo IV c 41, so far as relates to the obtaining of any drawback of duties of Customs, or Excise, or to the obtaining of any debenture, or certificate for receiving any such drawback, repealed

Duty on bonds for obtaining drawback repealed

WHERE an indorsed bill of lading cannot be admitted as evidence of the transfer of the goods, for want of a stamp, other proof may be received (*a*)

In an action by merchants against a person who, improperly, assumed authority from the master of a vessel to enter into contracts for the charter of such vessel, for damages arising from such misrepresentation, the plaintiffs offered in evidence an unstamped charter party, signed by the defendant, contending that, as it was made by an unauthorized agent, and not by the "master, captain, or owner," the want of a stamp was no objection, but *Wilde*, C J, held the objection to be fatal, the instrument purported to be a charter party made by the agent of the master, and fell within the provisions of the Act (*b*)

Charter party by agent of master

(*a*) *Davis* v *Reynolds*, 1 Stark 115 (*b*) *Brink* v *Wingard*, 2 C & K 656

Bonds.

AT this distance of time, no question will, probably, ever arise, in discussing which, it may be necessary to advert to the Stamp Duties charged on bonds anterior to the commencement of the 44 Geo. III. c. 98; in order to ascertain the amount of duties chargeable on bonds, from time to time, since that period, the Acts to be referred to are the following, *viz.*:—

44 Geo. III. c. 98, commencing 11 October, 1804:
48 Geo. III. c. 149, commencing 11 October, 1808:
55 Geo. III. c. 184, commencing 1 September, 1815:

the duties now payable, being those imposed by the latter Act, with a few exceptions, which are pointed out in the TABLE.

A variety of descriptions of bonds, charged with different amounts of duty, will be found in the Table; the first, and principal one, being, that of a bond given as a security for the payment of any *definite* (*a*) *and certain* sum of money; or, for the payment of money to be thereafter lent, advanced, or paid, or to become due upon an account current; the duty, in the latter case, being charged according to the amount limited to be ultimately recoverable; if there be no limit, then 25*l.*, the highest duty, is payable. The other instances of *ad valorem* duties on bonds are the following, *viz.*:—

BOND for the transfer or re-transfer of Government, and certain other stocks or funds.

BOND given as the only, or principal security for the payment of any annuity, *upon the original creation and sale thereof:* the duty in this case being charged by reference to the head "CONVEYANCE upon sale."

BOND for securing an annuity, or sums at stated periods, (*with exceptions,*) for a certain term, so that the whole amount of money to be paid can be previously ascertained.

BOND for securing an annuity for an indefinite period (*with the same exceptions*): the duty, in this latter case, being regulated by the amount of the annuity.

(*a*) In some editions of the statute "*definitive,*" by mistake.

The penalty not to be referred to.

The penalty of a bond given for securing an indefinite amount, although it limits the extent of the obligor's liability, is, in no case, a criterion as to the Stamp Duty; the condition, alone, is to be referred to; whatever, therefore, may be the penalty of a bond, the stamp duty will be 25*l.* where the money, for which the instrument is intended to be a security, is without limit, and is of the character of the sums described in the clause relating to bonds of this kind.

Bond securing an unlimited amount.

Scott v. *Allsop* (*b*), was an action of debt on a bond, in the penalty of 4950*l.*, given by bankers, conditioned to pay to the plaintiff all and every sum and sums of money in which they then stood indebted to him, or which they might thereafter owe, or stand indebted to him, in an account current. The bond was stamped with 7*l.* for the amount of the penalty, (under the 48 Geo. III. c. 149, the provision in which is the same as in the present Act); and it was argued, that, as the sum, ultimately, recoverable, was, necessarily, limited by the penalty, the stamp was sufficient; but the learned Judge (Mr. Baron *Wood*) was of a different opinion, and nonsuited the plaintiff; and, on a motion to set aside the nonsuit, the Court held, that the duty was to be measured by the condition; Mr. Baron *Wood* observing, that if it was not so, the duty would, in most cases, be payable on double the sum intended to be secured. The learned Baron also pointed out, that a bond, like the present, might, really, be a security for the highest sum mentioned in the Act, (20,000*l.*,) and that, therefore, there was good reason for stamping such bonds with the highest duty.

Bond to secure running accounts limited.

A bond, conditioned to indemnify the obligees for such sums as they should, in their banking business, within ten years, advance or pay, or be liable to pay, for, or on account of their accepting, &c., bills to be drawn upon them by *A. B.*, not exceeding 5000*l.* in the whole, was stamped with 9*l.*, the duty for 5000*l.*; and, in an action on the bond, the question was, whether it was a guarantee on a running account, or was satisfied by the payment of the first 5000*l.*; and, if it should be held to guarantee running accounts, it was contended that the amount secured was indefinite, and that a 25*l.* stamp was necessary.

The learned Judge, on the trial, and, afterwards, the Court, on a motion for a new trial, held, that the bond was a guarantee on running accounts, and that it was sufficiently stamped (*c*). This

(*b*) 2 Price, 20.

(*c*) *Williams* v. *Rawlinson*, M. & R. 233; 3 Bing. 71; 10 Moore, 362.

bond, being held to secure running accounts, would, within the principle suggested by Mr. Baron *Wood* in *Scott* v. *Allsop*, have been the legitimate subject of charge to the highest duty, but the sum, ultimately, recoverable thereon being limited, the stamp duty, also, was limited. No allusion would have been made to this observation of the learned Baron, but for the argument founded upon it, in the next case.

Again, in *Lloyd* v. *Heathcote* (*d*), a bond was given to secure the payment of all moneys necessary to enable the obligees to pay bills, drawn on them by the obligors, and all moneys, bills, &c., supplied to the latter by the obligees, &c.; with a proviso, that the whole amount, to be, ultimately, recoverable, should not exceed 1000*l*. It was contended, (in reference to the remark of Mr. Baron *Wood* in *Scott* v. *Allsop*,) that as the bond was, in fact, to secure many thousands of pounds, that would, from time to time, become due, it should have been stamped with 25*l*.; but the Court held it to be, plainly, within the proviso in the 55 Geo. III c. 184, which imposed a duty on the amount limited to be, ultimately, recoverable. On the question, whether the liability on a bond was confined to one set of acceptances, for a limited sum, or was to be extended to a balance of the same amount, upon a running account, see also *Sansom* v. *Bell* (*e*).

Bond to secure future limited advances with bankers' commission.

Dickson v. *Cass* (*f*) was the case of a bond entered into by the defendant, and other persons, in the penalty of 2000*l*.; reciting, that the other obligors had opened an account with the obligees, as bankers, who had agreed to advance for them any sums of money, not exceeding, at one time, 1000*l*.; and conditioned to repay all sums that the obligees might advance, and pay, or be liable to pay, on account of their accepting bills for the obligors, and all sums that the obligees should have advanced or paid, or become liable to pay for them, *together with such lawful charges, and allowances, for advancing and paying such bills, &c., as were usually charged by bankers in such cases, with lawful interest* The bond was stamped for 1000*l*., which the Court held to be insufficient for sums for commission, which must be ultra the 1000*l*. The Court also observed, that it had been rightly conceded, that the condition, and not the penalty, must be looked to in ascertaining the stamp duty. This decision has been the subject of remark, on questions in subsequent cases arising under

(*d*) 1 C. & M. 337; 3 Tyr 309 (*e*) 2 Camp. 39
(*f*) 1 B. & Ad. 343

the parallel clause in the Stamp Act relating to mortgages, and whereby it has been suggested to have been, virtually, overruled, although the learned Judges, in determining those cases, took pains to distinguish them from it. Be this, however, as it may, it is not now material to inquire into it, since *Dickson* v. *Cass* has been, since, in plain and unambiguous terms, overruled, by the Court of Exchequer, in a case decided in reference to the stamp duty on bonds of the same description.

The case alluded to is *Frith* v. *Rotherham* (*g*), which was as follows, *viz.*: A bond was given by the defendant in a penalty of 2000*l.*; the condition recited that a certain banking company had agreed to open an account with the defendant, on his securing the several sums which might, from time to time, become due on the balance of his account, subject to the limitations thereinafter mentioned; and it was declared, that if the defendant did, well and truly, pay to the company, all and every such sum and sums of money, not exceeding in the whole 1000*l.*; which, from time to time, should be and remain due and owing from him, on balance of his account current, with respect to moneys advanced by them, &c., together with such interest and commission as should be due to the company, and all customary or incidental charges for stamps, &c., the bond should be void. The sums for commission, &c., were treated as ultra the 1000*l.*, as in *Dickson* v. *Cass;* but the Court held that the bond was sufficiently stamped, having upon it the duty for 1000*l.* only; that the stamp duty was regulated by the principal sum, without regard to interest; and commission was considered to be, equally, excluded. Mr. Baron *Parke* observed, that commission was not "money lent," "money advanced," "money paid," or "money due upon an account current;" it was a remuneration for work and labour; and there was no clause in the statute which imposed an additional stamp on a bond given to secure such remuneration. Mr. Baron *Platt* remarked, that the word *repayment,* in the Stamp Act, could not apply to commission or interest.

Whatever may be the notion as to sums debited by bankers, merchants, and others, to their customers, for commission, &c., forming part of their account current, this observation of Mr. Baron *Platt* seems of much value in the question.

The cases of mortgages, before adverted to, were reviewed by Mr. Baron *Parke* with great accuracy and discrimination; these

(*g*) 10 Jur. 208; 15 L. J. R. (N. S.) Exch. 133

cases, but for the decision in *Frith* v. *Rotherham*, it would be necessary to bring under especial notice here.

The distinction, it may be observed, between bonds and mortgages, in regard to the point now under discussion is, that, by the former, nothing is secured that is not expressly provided for; whereas, in the latter, moneys expended by the mortgagee, to make his security available, are allowed to him, whether specified or not, and, therefore, if specified, do not, necessarily, involve the payment of additional duty; nor, unless they constitute a *debt* from the mortgagor, as observed by Mr. Baron *Parke* in *Wroughton* v. *Turtle;* and this distinction was, perhaps, quite sufficient to render it unnecessary to disturb the judgment in *Dickson* v. *Cass*, for the purpose of arriving at a different conclusion in those cases.

In *Lopez* v. *De Tastet* (*h*), a verdict had been returned for 37,000*l.*; but a new trial was granted, on a bond being executed for securing the sum to be recovered, and costs, in case a similar verdict should be given on the second trial. It was decided that a 35*s.* stamp was the proper one; the bond not being given for a certain sum, nor for money to be lent, advanced, or paid. In this case the sum was indefinite; but the bond could, scarcely, be considered as coming within the description of those mentioned in the clause relating to unlimited sums to be advanced.

Stamp duty not payable on interest; whether due, or to become due.

Stamp Duty is chargeable only in respect of the principal money secured, notwithstanding the bond is made to secure, also, interest from an antecedent date.

A bond was given for 3000*l.*, and, also, by-gone interest; it was stamped only for the 3000*l.*; and the Court held it to be sufficient. The words, "definite and certain sum," were considered to refer to the principal sum only; the interest, whether by-gone or subsequent, was in the nature of damage for the non-payment of the sum advanced, and did not fall within the meaning of a definite, and certain sum, secured by the bond (*i*).

A bond, given by a principal and two sureties, to the trustees of a society, conditioned to pay 200*l.*, money advanced by the society, by instalments of 2*l.* 8*s.* per month, until the full sum, together with interest, at 5*l. per cent.* upon *the whole sum of* 200*l. throughout the whole time aforesaid,* should be fully paid, was stamped for 200*l.*; it was contended that this was insufficient, as the pay-

(*h*) 8 Taunt. 712.

(*i*) *Barker* v. *Smark*, 7 M. & W. 50; *Parker* v. *Smart*, 2 Dowl. 211; see also, *Dixon* v. *Robinson*, 1 Moo. & Rob. 115; 5 C. & P. 96; and *Foreman* v. *Jeyes*, 5 C. & P. 419.

ment of more than 200*l.* and lawful interest was secured; but the Court said they could not satisfy themselves that the stamp was not sufficient (*k*).

In *Pierpoint* v. *Gower* (*l*), it seems to have been conceded, that a warrant of attorney, (which is chargeable with the same duty as a bond,) stamped for the principal sum only, was sufficient, although it secured the payment of interest from an antecedent period. See also the cases upon the same point, under the division relating to bills of exchange and promissory notes, p. 136, *ante*.

Previously to the 48 Geo. III. c. 149, which first made express provision for bonds securing unlimited amounts, it was considered, in *Simson* v. *Cooke* (*m*), that such a bond was *casus omissus;* it must, however, have been liable as a bond not otherwise charged, which item in the schedule to the 44 Geo. III. c. 98, had, probably, been overlooked. In that case the bond was stamped with 7*l.* for the amount of the penalty.

Bond for payment of rent.

A bond, in the penalty of 1730*l.*, was given by the lessee of tolls, and two sureties, for the due payment of the yearly rent of 865*l.*, for the tolls, for two years; it was stamped with 3*l.*; but it was objected, that it ought to have been stamped with 4*l.*, as for a definite and certain sum exceeding 1000*l.*, and not exceeding 2000*l.*; and the Court so held. The second branch of the schedule, by expressly excepting the case, showed that it fell under the first branch, which made no such exception, and it explained the first; as it was excluded by express provision out of the latter branch, so it fell within the generality of the first; it seemed that this was a bond for the payment of a definite and certain sum, though payable at future periods (*n*). This was the reasoning of Lord *Ellenborough;* but, although the decision has been, at all times, kept in view at the Stamp Office, and pointed to, on questions relating to instruments of the same description; the opinion has, nevertheless, always been held, and expressed when occasion required, that it was concluded erroneously, and without due consideration, and that parties might safely treat it as not law; for that if the point again arose, the evident mistake, which, if the case was correctly reported, the Court had fallen into, would surely, be corrected. This has, after a lapse of many years, turned out to be so, for, in the case of *The Winchester Corn Exchange Company*

(*k*) *Dearden* v. *Binns*, 1 Man. & Ry. 131.

(*l*) 4 M. & G. 795; 12 L. J. R. (N. S.) C. P. 55; 2 Dowl. N. R. 652; 6 Jurist, 952.

(*m*) 8 Moore, 588.

(*n*) *Attree* v. *Auscombe*, 2 M. & S. 89.

v *Gillingham* (*o*), the question arose, and the Court considered that *Attree* v. *Anscombe* was hastily decided, or incorrectly reported. In the case alluded to, a bond, given by a lessee for one year, conditioned for payment of the rent, quarterly, was held not to be within the first part of the schedule; it would, the Court observed, be travelling out of the ordinary construction of language to hold so; it was excepted from the other, and, therefore, came within the general description, and was sufficiently stamped with 35*s*., as a bond, not otherwise charged. The Court was encouraged in this view, by the opinion of Mr. Justice *Littledale*, in *Toovey* v. *Simons* (*p*), who, however, deeming himself tied by the authority of *Attree* v. *Anscombe*, held that a similar bond must have an *ad valorem* duty. His Lordship, whatever his own opinion might be, never considered it competent in him, sitting apart, to decide against the opinion of the full Court.

Articles of agreement, under seal, with a penalty, for payment of a yearly salary.

In *Mounsey* v. *Stephenson* (*q*), articles of agreement, under seal, were produced, whereby the plaintiff agreed to pay the defendant a salary of 35*l*. *per annum;* and the defendant covenanted not to open a shop within a mile of the plaintiff's house; the parties, mutually, binding themselves in a penalty of 600*l*. to perform the agreement. The instrument was impressed with a 35*s*. stamp; and it was objected, on the authority of *Attree* v. *Anscombe*, that it was liable to *ad valorem* duty, as a bond. The Court held, that if it was a bond, it was not one of those specified in the Act, and, therefore, whether it was a bond, or a common deed, the stamp was sufficient.

A yearly salary, for services performed, is not an *annuity*, as the last case expressly decides; and, although it scarcely falls in with the idea entertained of the meaning of the words, *any sum or sums at stated periods*, within the clause imposing *ad valorem* duty on annuity bonds, yet it is doubtful, perhaps, whether the case is to be taken as an authority on this point; Lord *Tenterden* merely says, that the bond is not for payment of an *annuity*, nor for the payment of any *certain* sum of money; as though, in using the latter words, his Lordship referred to the first clause relating to bonds; still, as express reference is made to the annuity-bond clause, it is, probably, too much to say, that it is not an authority. The argument of the counsel for the defendant could not advance the case a step in the direction contended for, unless it could be shown that the instrument in question was a bond; and this point

(*o*) 12 L. J. R. (N. S.) Q. B 159; 3 Gale & D. 567; 4 A. & E. (N. S.) 475.

(*p*) 3 Jurist, 1179.

(*q*) 7 B. & C. 403.

the Court did not determine, it not being necessary to do so. It, certainly, seems to partake as little of the nature of a bond at all, as it does of a bond within the description alluded to. It is not, however, essential to the constitution of a bond, that it should be in the form usually adopted. See *Sawyer* v. *Mawgridge* (*r*), where, in debt upon bond, the following words, under hand and seal, were held to be a bond, *viz.*: "These are to authorize you, *I. S.*, to sell so many of my goods as come to nine pounds, to pay my debts, which I do hereby acknowledge to owe to you," &c. The Court observed that the word "oblige," was not necessary to make a bond; if one, under hand and seal, acknowledged himself "indebted," it was enough to bind him. But a stamp duty is not to be considered as payable by analogy, or by construction; a covenant to pay money cannot, therefore, be made liable to stamp duty *as a bond*, unless it be a bond.

Annuity Bonds. Bond for securing an Annuity granted as the consideration for the purchase of property.

ANNUITY BONDS.—A bond was given by *B.* to *M.* reciting that *M.* had contracted with *B.* for the sale to him (*B.*), of a messuage, &c., in consideration of, (amongst other things,) an annuity of 150*l.* to be paid to *M.* during her life; and reciting, that for the better securing the annuity, it was agreed that this bond should be given; and the condition was, for the payment by *B.*, his heirs, &c., to *M.* during her life, of an annuity, or clear yearly sum of 150*l.* It was stamped with 35*s.*

The Court held the stamp to be sufficient.

Parke, B., said: On the face of the instrument it is not a subsequent, collateral security, but given originally; if so, it is to be stamped either as an original conveyance, or as a collateral security on the original conveyance; if it be an original security, there is no pecuniary consideration on the face of it, and, therefore, the clause imposing an *ad valorem* duty does not apply. If it be contended that it is a collateral security, then the stamp is too great; the subsequent clauses do not apply; the defendant, then, not being able to bring it within any special clause, it falls within the general bond clause, and is properly stamped with a common deed [bond] stamp.

Mr. Baron *Alderson* observed, that it was quite clear that this was a security on the original creation of an annuity; and that, therefore, whether the first, or the second of the cited clauses, were looked at, the stamp was right, for the reasons given by Mr. Baron *Parke* (*s*).

(*r*) 11 Mod. 218.
(*s*) *Mestayer* v. *Biggs*, 1 C. M. & R. 111; 4 Tyr. 466.

Some observations will be necessary upon this decision, on so very important a point; and, with all the deferential respect which is due to such eminent authority, it is humbly, but with great confidence submitted, that the judgment is founded on an erroneous view of the Act, by excluding from consideration two words, which appear to be taken no account of whatever, although, certainly, brought to the notice of the Court, but which, in truth, form the key to the interpretation of the statute. The argument of counsel, against the bond, was not sufficiently enforced.

The bond in question is, undoubtedly, charged with the *ad valorem* duty of 4*l.* as a bond given *as a security for the payment of an annuity, for the term of life.* It will not be disputed, that it is an instrument thus described; and it remains to be seen whether it is one of those instruments that are excepted from this description of bond, in the clause imposing *ad valorem* duties on annuity bonds. The annual sum secured is not *interest for any principal sum;* nor is it *rent reserved, or payable upon a lease,* as excepted from the clause; but it will be said, that it is included in the words, "*except as aforesaid.*" In order to ascertain whether this be so, or not, regard must be had to the exceptions in the previous clauses, to which reference is thus made. The only exception mentioned before, besides that of a bond given for payment of "interest for any principal sum," or "rent reserved or payable upon any lease," is the following, *viz.*, bond given as a security for the payment of "an annuity *on the original creation* AND SALE *thereof;*" this, therefore, is what is alluded to by the words, "*except as aforesaid,*" in the clause imposing the *ad valorem* duty on an annuity bond; and the question is, what is the meaning of the words "original creation *and sale?*" There will be no difficulty in showing this, and that they do not apply to the bond in question; which, although given upon the original creation of an annuity, is not "*upon the sale* thereof."

Where a bond is given, as the only, or principal security for payment of an annuity, *upon the original creation* "*and sale*" thereof, reference, it will be seen, is made, for the duty chargeable thereon, to the head "CONVEYANCE upon the sale of lands, &c.;" on referring to which head it will be found, that where, *upon the sale of any annuity,* the same is not created by actual grant, or conveyance, but is only secured by bond, &c., the bond, or other instrument, is to be deemed and taken to be liable to the same duty as an actual grant or conveyance. "Annuities" are there, expressly, mentioned, as the subject of conveyance *upon sale,*

chargeable with *ad valorem* duty under this head: and, in any grant or conveyance of any such annuity, the true purchase or consideration money is required to be set forth, the *ad valorem* duty, thereupon, attaching in respect of the amount so expressed; consequently, a bond given, as the only or principal security for the payment of an annuity, *upon the original creation "and sale" thereof*, is charged with *ad valorem* duty as a conveyance, and it is such a bond, *only*, which is included in the words, "*except as aforesaid*," in the clause charging *ad valorem* duty on annuity bonds. If, *upon the original creation "and sale"* of an annuity, the same is granted or conveyed by another instrument, liable to *ad valorem* duty as a conveyance, then, a bond given as a collateral security for the annuity, is, expressly, charged with the duty of 20*s*.

If the bond be given for the payment of an annuity (*not upon the original creation and sale thereof*), for a definite term, so that the whole amount of money to be paid can be previously ascertained, it is also, expressly, provided for; the duty being, in such a case, chargeable, as on a bond for the total amount; but, if it be for an indefinite period, and *not upon the creation "and sale,"* the duty is charged, as before observed, on the amount of the annuity; and within the clause last referred to, the bond, in *Mestayer* v. *Biggs*, should have been held to fall. It was given originally, but was not to be stamped, as Mr. Baron *Parke* observed, either as an original conveyance, or as a collateral security on the original conveyance; because there was no original conveyance of the annuity, chargeable with *ad valorem* stamp duty. The argument of the learned Baron would have been properly applied to the present case, but for the very important words "*upon sale*," which were either overlooked, or not sufficiently appreciated.

Mortgage bond.

Even date.

MORTGAGE BONDS.—A bond accompanying a mortgage, unless bearing even date with the mortgage deed, must be stamped with *ad valorem* duty. Where a bond, for 6000*l*. was dated two days after the mortgage, although executed at the same time, and was stamped with 20*s*. only, it was held that it could not be received in evidence; Lord *Tenterden* observing, that the words "bearing even date," in the schedule, were plain and clear, and tied down the operation of the clause to the date written on the instrument (*t*).

Bond not be-

In order to entitle a mortgage bond to the exemption from *ad*

(*t*) *Wood* v. *Norton*, 9 B. & C. 885; 4 M. & R. 673.

tween the same parties as the mortgage.

valorem duty, it is not essential that the mortgage should be between the same parties; nor is it necessary that the mortgage should be produced, in order to show that the *ad valorem* duty has been paid; the recital in the bond is, *primâ facie*, evidence of the existence of a valid deed of the same date. These points were decided in *Quin and wife* v. *King* (*u*); which was the case of an action on a bond, for 2800*l.* stamped with 20*s.* under the 48 Geo. III. c. 149, (the provision in which Act is the same as in the 55 Geo. III. c. 184,) given to the female plaintiff, bearing even date, with a conditional surrender of certain copyhold lands, for securing the same sum, but to which the defendant was no party.

Recital of mortgage sufficient.

The recital must show the collateral deed to be liable to *ad val.* duty as a mortgage.

The recital, however, in a mortgage bond stamped with a duty of 20*s.* must show, that the deed, of even date, is such a one as is liable to the *ad valorem* duty on mortgages. See *Walmesley* v. *Brierley* (*x*); where it was held by Mr Baron *Parke*, that proof of a bond, stamped with 20*s.*, for payment of a sum of money, secured by an "indenture," of even date, was not sufficient without the production of the deed; it did not appear, nor could it, necessarily, be inferred, that such indenture was "a mortgage, or wadset, or an instrument charged with the same duty as a mortgage or wadset;" it might have been a mere deed of covenant.

Denoting stamp on bonds.

In *Wood* v. *Norton*, allusion was made to a denoting stamp on the bond; it may be here remarked, that, in no instance, is provision made for impressing a bond with a stamp, denoting the payment of *ad valorem* duty on any other instrument. See "DENOTING STAMP."

Bond for performance of conditions by vendor.

A bond, in the penalty of 500*l.* for securing the performance of certain conditions, (not relating to the payment of money,) on the purchase of a house, was held, in *Hughes* v. *King* (*y*), not to require an *ad valorem* duty. This case is, merely, alluded to, because it happens to be reported, but upon so plain a point, no authority was required. So, also, is the case of *Bownes* v. *Marsh* (*z*); in which it was decided, that a bond, in the penalty of 100*l.*, given to indemnify the parish officers from all incumbrances, costs, charges, damages, and expenses, for, or by reason of the birth, education, and maintenance of an illegitimate child, was chargeable with the duty of 1*l.* 15*s.* only. It was contended that a 25*l.* stamp was the proper one.

Bastardy bond.

(*u*) 1 M. & W. 42; Tyr. & G. 407; 1 Gale, 407.
(*x*) 1 Moo & R. 529.
(*y*) 8 Taunt. 712.
(*z*) 10 Jurist, 905; 16 L. J. R. (N. S.) Q. B. 36; 10 A. & E. (N. S.) 787.

A., as principal, and *B.*, as surety for him, executed a bond, (in the Scotch form,) for payment, to the creditors of certain other persons, of a composition on their debts; and, by the same instrument, *A.* bound himself to save *B.* harmless from his cautionary obligation; the bond was stamped with 35*s.* only; which was held to be sufficient; the Court observing, that it was not a bond for securing any certain sum of money; nor was a distinct stamp necessary in consequence of the indemnity to *B.*; the whole appeared to be one transaction; *A.'s* agreement to indemnify *B.* was, no doubt, the consideration for *B.'s* becoming surety (*a*).

For payment of composition, and also guaranteeing a surety.

In an action of debt, on a bond, it appeared that the defendant, and several other persons, musicians, entered into one bond, with one stamp, conditioned to attend certain meetings regularly, to perform, &c.; it was held, that it was sufficiently stamped (*b*). As to instruments embracing several matters, in reference to this, as well as the preceding case, see "INSTRUMENTS."

Bond by several persons.

WARRANTS OF ATTORNEY to confess judgment, in so far as they are given, or operate as securities for money or stock, being, (save where otherwise provided, by way of exception,) expressly charged with the same duties as bonds, must, in all respects, be subject to the regulations, contained in the Stamp Act, as to bonds; as well as to the duties, throughout, on the latter instruments (consistent with the exceptions); matters, therefore, relating to them, properly fall within this division of the work.

Warrants of attorney.

A Warrant of Attorney need not be by deed (*c*).

Not by deed.

A Warrant of Attorney given by a person in custody, on a writ of execution, *and a surety*, for payment of the debt and costs, amounting to 52*l.* 15*s.* 10*d.*, was stamped with 20*s.*; but the Court held that it was not within the exception, and was, therefore, liable to *ad valorem* duty (*d*).

Warrant of attorney by prisoner *and surety*.

To bring a Warrant of Attorney within the exception, it is not essential that it should appear, on the face of it, that the party was in custody, the fact might be proved *aliunde*; but the recital is evidence of the fact, liable, of course, to be rebutted (*e*).

Recital of party in custody not necessary.

It will be observed that the exemption of Warrants of Attorney from *ad valorem* duty, where the party is in custody, extends only

(*a*) *Annendale* v. *Pattison*, 9 B. & C. 919. See "INSTRUMENTS."

(*b*) *Bowen* v. *Ashley*, 1 N. R. 274.

(*c*) *Kinnersley* v. *Massen*, 5 Taunt. 265.

(*d*) *Solari* v. *Yorston*, 2 P. & D. 338.

(*e*) *Hartley* v. *Manson*, 11 L. J. R. (N. S.) C. P. 199; 4 M. & G. 172; 1 Dowl. N. R. 711; see also *Bailey* v. *Bellamy*, 9 Dow. P. C. 507; 10 L. J. R. (N. S.) C. P. 41.

to such as are given for securing the money for which he is so in custody.

Bonds executed out of the kingdom.

Instruments executed at places out of the kingdom, are liable to stamp duty, if they relate to property situate within, or to any matter or thing, other than the payment of money, to be done within the kingdom; and with regard to instruments relating to the payment of money, (not secured also on property,) as bonds, covenants, and agreements, the places of residence of the obligors, covenantors, or persons liable, are to be the criterion, whether they are liable to duty, or not. As the duties in Great Britain and Ireland are now assimilated, it is, for the purpose of ascertaining the duty on any such instrument, quite immaterial in which part of the United Kingdom the obligors, &c., or any of them, reside; if the residence of any one of them be, *bonâ fide*, within the kingdom, a stamp is requisite (*f*).

Bond executed in Paris.

In an action against the publisher of a newspaper, brought by the minister of Chili, for a libel, relating to a loan to that State, a bond, executed by the plaintiff in Paris, for part of the loan, necessary to be given in evidence, was objected to, for want of a stamp, it being issued in England; but it was admitted by Lord C. J. *Best;* and it was, afterwards, held by the Court not to require a stamp (*g*).

Exemption. Friendly so cieties.

A bond by a publican, at whose house a Friendly Society was held, for the safe custody, and production of a box containing the subscriptions to the Society, was held to be within the exemption from stamp duty in the 33 Geo. III. c. 54, s. 4, of "bonds and other securities given to, or on account of any such society, or in pursuance of the Act" (*h*). This exemption was continued in the 55 Geo. III. c. 184. The present exemption, relating to Friendly Societies, will be found amongst those set out at the end of the TABLE.

The bond of a collector of taxes is within the exemption in favour of such securities, although not taken in the precise amount required by the 43 Geo. III. c. 99, s. 13 (*i*).

Customs and excise bonds.

As to including in one customs or excise bond the goods of several persons, see "STAMPS," 6 Geo. IV. c. 41, *post*.

(*f*) 1 & 2 Geo. IV. c. 55, s. 2; see also "INSTRUMENTS" upon this subject.

(*g*) *Yrissari* v. *Clement*, 2 C. & P. 229.

(*h*) *Carter* v. *Bond*, 4 Esp. 253.

(*i*) *Collins* v. *Gwynne*, 9 Bing. 551.

Cards and Dice.

9 Anne, c. 23.	5 Geo. III. c. 46.
10 Anne, c. 19.	16 Geo. III. c. 34.
3 Geo. I. c. 7.	29 Geo. III. c. 50.
5 Geo. I. c. 19.	41 Geo. III. c. 86.
6 Geo. I. c. 21.	44 Geo. III. c. 98.
29 Geo. II. c. 13.	53 Geo. III. c. 108.

By the above Acts, duties were granted on playing cards and dice, and provisions enacted relating to the same.

9 Geo. IV. c. 18.

Sect. 1.—By this Act, so much of the foregoing Acts as related to cards and dice, were repealed; and new duties granted on playing cards and dice, in Great Britain and Ireland, and on licences to make the same, for which see TABLE. Other enactments were, also, made for securing the payment of such duties.

Conveyance on Sale.

SUCH special provisions only, as are, exclusively, applicable to conveyances upon the sale of property, will be found under this head. For the enactments relating to those instruments, in common with others, see "INSTRUMENTS."

48 Geo. III. c. 149.

Ad valorem duties on conveyances upon the sale of property were first imposed by this Act, (commencing on the 11th October, 1808); such instruments being, previously, subject to stamp duty only as deeds in general.

The purchase-money to be truly set forth in the conveyance.

Sect. 22.—From and after the 10th October, 1808, in all cases of the sale of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest or claim, in, to, out of, or upon any lands, tenements, rents, annuities, or other property, where a duty is imposed on the conveyance thereof, in proportion to the amount of the purchase or consideration money therein or thereupon expressed, the full purchase or consideration money, which shall be directly or indirectly paid, or secured or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the principal or only deed or instrument, whereby the land or other thing sold shall be granted, assigned, transferred, released, renounced, or otherwise conveyed to, or vested in, the purchaser, or any other person, by his direction; and also where, upon the sale of any annuity, easement, servitude, or other right, not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or other security, the full purchase or consideration money, which shall be directly or indirectly paid, or secured or agreed to be paid for the same, shall be truly expressed and set forth, in words at length, in or upon the bond or other instrument or instruments, by which the same shall be secured; and if, in any of the said cases, the full purchase or consideration money shall not be truly expressed and set forth in the manner hereby directed, the purchaser and also the seller shall forfeit the sum of fifty pounds, and shall also be charged and chargeable with and be holden liable to the payment of five times the amount of the excess of duty, which would have been payable for such deed, bond, or other instrument as aforesaid, in respect of the full purchase or consideration money, in case the same had been truly expressed and set forth in or upon the same, pursuant to the directions of this Act, beyond the amount of the duty actually paid for the same; which quintuple duty shall be deemed and taken to be a debt to his Majesty, his heirs and successors, of the party or parties respectively hereby made liable to pay the same, and shall and may be sued for and recovered accordingly.

Penalties for default thereof.

Parties informing to be indemnified and rewarded.

Sect. 23.—Provided always, that if any or either of the parties shall give information to the Commissioners of Stamps, whereby such penalty, or quintuple duty, or any part thereof, shall be recovered from any other party or

parties liable thereto, the party giving the information shall not only be indemnified and discharged of such his liability, but shall also be rewarded by the Commissioners of Stamps, out of the penalty or quintuple duty so recovered, to such extent as the said Commissioners or the major part of them, shall think proper, but not exceeding one-half of what shall be so recovered, and where any other person shall give information, whereby any such penalty or quintuple duty shall be recovered, he shall be rewarded in the like manner

The purchaser may recover back so much of the consideration as is not stated

Sect 24 —And where the full purchase or consideration money shall not be truly expressed and set forth, in the manner hereby directed, the purchaser, or his executors or administrators, may recover back from the seller, or his executors or administrators, so much and such part of the purchase or consideration money as shall not be expressed and set forth as aforesaid, or the whole thereof, if no part of the same shall be so expressed and set forth, either in an action for money had and received for the use of the party suing for the same, or by action of debt, &c, in any of His Majesty's Courts of Record at Westminster, or by ordinary action or summary complaint in the Court of Session, or in the Sheriff or Stewart Court of the Shire or Stewartry, where the person sued or complained of shall reside in Scotland, as the case may require, together with double costs of suit

Penalties on attorneys, &c, for not inserting the true consideration

Sect 25 —And if any attorney, solicitor, writer to the signet, or other person, who shall be employed in or about the preparing of any such deed, bond, or other instrument in or upon which the full purchase or consideration money is hereby required to be truly expressed and set forth as aforesaid, or who shall be employed for any of the parties thereto, in anywise about or relating to the transaction therein mentioned, shall knowingly and wilfully insert or set forth, or cause to be inserted or set forth, in or upon any such deed, bond, or other instrument, any other than the full and true purchase or consideration money directly or indirectly paid, or secured or agreed to be paid for the same, or shall in anywise aid or assist in the doing thereof respectively, every such attorney, solicitor, writer to the signet or other person so offending, shall forfeit for every such offence, 500*l*, and every such attorney, solicitor, and writer to the signet, on being convicted, shall also be disabled to practise And any person entitled, or intrusted to prepare any such deed, or other instrument, in virtue of any public office or employment, being guilty of such offence in the execution of his office or employment, and being convicted thereof, shall forfeit his office and be incapable of holding the same

No penalty if there be no evasion of duty

Sect 26 —Provided, that no person shall be liable to any such penalty, disability, or forfeiture, unless the duty actually paid shall be less than would have been payable for the same, in case the full purchase or consideration money had been truly expressed

Where lands are conveyed by several deeds

Sect 27 —Where lands are conveyed by bargain and sale enrolled, and also by lease and release or feoffment, or, by lease and release and also by feoffment, the *ad valorem* duty being impressed, in the former case, on the release, or the feoffment, and, in the latter, on the release, the Commissioners are to stamp the other of such deeds, respectively, (the ordinary deed duty being first paid thereon,) with a peculiar stamp for testifying the payment, on the release or feoffment, of the *ad valorem* duty See a similar provision in the 55 Geo III c 184, as set forth in the TABLE, and as abstracted in this chapter, page 216, *post*

Sect 28.—As to enrolling any bargain and sale, not duly stamped—see "PUBLIC OFFICERS"

Conveyances of property sold before 12th April, 1808 exempt from *ad valorem* duty

Sect, 29 —Provided, where any property shall have been, prior to the 12th April, 1808, actually, and *bonâ fide*, contracted to be sold, by a contract or agreement, in writing, duly stamped according to the laws in force at the time of the date and execution thereof, or actually sold under the decree of any Court, and shall after the 10th Oct 1808, be conveyed to the purchaser, or any person by his or her direction, the principal, or only deed or instrument, whereby the same shall be conveyed, shall be exempt from *ad valorem* duty,

if exceeding 1*l.* 10*s.*, and be charged with 1*l.* 10*s.*, in lieu thereof; but, in order to prevent frauds, such deed or instrument shall be produced to the Commissioners of Stamps within two calendar months after the execution thereof, and, upon its being proved, to their satisfaction, that the property was actually and *bonâ fide* contracted to be sold, or sold, as aforesaid, prior to the 12th April, 1808, the said Commissioners, or any two of them, shall sign a certificate of what shall be so proved, upon such deed or instrument, and, thereupon, such deed or instrument, being stamped with the said duty of 1*l.* 10*s.*, shall be as valid and available in law, as if the same had been stamped with the *ad valorem* duty: but shall not, without such certificate, be given in evidence, or be, in any manner, available, unless stamped with the *ad valorem* duty.—*Note.* This exemption is continued by the 55 Geo. III. c. 184, the deed being charged with the duty of 1*l.* 15*s.*, instead of 1*l.* 10*s.*

Sect. 30, 31, 32, 33, 34.—Relating to the surrenders, &c., of copyhold lands. See "COPYHOLD ESTATES."

In the schedule of duties annexed to this Act, under the head "CONVEYANCE," are many notes, containing various regulations and provisions relating to deeds of conveyance on the sale of property, which are all repeated in the schedule to the 55 Geo. III. c. 184, and are to be found in the TABLE.

50 Geo. III. c. 35.

Sect. 13.—For rectifying mistakes made in the use of stamps on deeds. See "SPOILED STAMPS."

Stamps good though not of the proper denomination.

Sect. 16.—Instruments having thereon stamps of equal or greater value than required, but not of the proper denomination, shall nevertheless be deemed valid; except where any such stamp shall have been specially appropriated to any other instrument, by having its name on the face thereof. See "INSTRUMENTS."

Leases granted to third persons under contracts made with intermediate parties; duty to be charged on the sums paid to the latter.

Sect. 17.—Reciting that doubts had been entertained, whether the exemption, contained in the schedule to the 48 Geo. III. c. 149,* of certain leases and tacks of lands, hereditaments, or heritable subjects, from the *ad valorem* duties granted on conveyances upon the sale of property, extended to leases or tacks, not exceeding the term or interest specified in the exemption, granted, in pursuance of a previous contract or agreement, to any other person or persons, than the person or persons with whom such contract or agreement was made, or his, her, or their heirs, executors, administrators or assigns, in consideration of a sum of money paid, or secured, or agreed to be paid, or secured, to the person or persons with whom such contract or agreement was made, his, her, or their heirs, executors, administrators, or assigns, for his, her, or their right or interest in the property; and reciting, that some such leases had been made and stamped as if they did not fall within the said exemption, whilst others had been made without stamps for denoting the payment of the said *ad valorem* duties, and without regard to the provisions of the last-mentioned Act, relating to conveyances upon the sale of property, under the supposition that the exemption did extend thereto; *it is enacted*, that all leases and tacks of the description aforesaid, made before the 1st August, 1810, shall be deemed and taken to have been within the scope of the exemption, at the time of the making thereof; and that all persons shall be indemnified from all penalties and forfeitures in respect of the same; and that from and after the said 1st August, 1810, the said exemption shall not extend, or be deemed or construed to extend, to any leases, or tacks, of the description aforesaid, which shall be made at any time after that day.

* This exemption is as follows, *viz.*: "All leases and tacks of lands, hereditaments, or heritable subjects for a life or lives, or for a term of years determinable with a life or lives, or for a term absolute, not exceeding 99 years, in consideration of a fine or grassum paid for the same."

53 Geo. III. c. 108.

By this Act, which commenced on the 10th July, 1813, various provisions were made relating to *ad valorem* duties on conveyances upon the sale of property, all of which were superseded by others, contained in the 55 Geo. III. c. 184, (as herein abstracted, and as set forth in the TABLE, under the head "CONVEYANCE,") taking effect from and after the 31st of August, 1815; the provisions in question, which were thus in operation only for the short period of two years, or thereabouts, were to the effect following.

Sect. 5.—A deed operating as a conveyance upon sale of property, and for any other purpose not incidental, was charged with an additional duty as under the subsequent Act. But it was provided that instruments of this description, made before the passing of the Act, should be deemed duly stamped and valid, although they should not have paid such further duty.

Sect. 6.—When property contracted to be purchased of different persons was conveyed by one deed, a separate duty was to be charged for each separate price; but deeds made before the Act were to be deemed sufficiently stamped, whether the duty was paid upon the aggregate, or on the different purchase-moneys. By the 55 Geo. III. c. 184, the duty is charged upon the aggregate.

Sect. 7.—Where property was sold charged with any money, such money was to be deemed part of the consideration upon which the *ad valorem* duty was to be calculated; as under the present Act.

Sect. 8.—Where there were duplicates of mortgages, or conveyances, one was to be charged with *ad valorem* duty, the other to be stamped with the duty on deeds in general; the latter to be also stamped with a denoting stamp.

Sect. 9.—Where there were several deeds for effecting the conveyance, and a doubt arose which was the principal, in cases not provided for by the 48 Geo. III. c. 149, (schedule,) the parties might determine for themselves; those not stamped with *ad valorem* duty to be stamped with a denoting stamp.

55 Geo. III. c. 184.

By this Act the duties granted by the 48 Geo. III. c. 149, are repealed, and others, of the same description, granted in lieu; which, so far as they are still payable, will be found in the TABLE OF DUTIES.

Duties repealed.

Sect. 8.—All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties contained in, and imposed by the several Acts relating to the duties repealed, and to any prior duties of the same kind or description, to be of full force and effect with respect to the duties hereby granted, and to the vellum, parchment, and paper, instruments, matters, and things charged or chargeable therewith, as far as the same are applicable, in all cases not hereby expressly provided for, as if the same were herein repeated, and specially enacted, with reference to the said duties hereby granted.

New duties.

Sect. 30.—Conveyances to be made after the 31st August, 1815, of lands or other property contracted to be sold prior to the 12th April, 1808, which, under the 48 Geo. III., would be exempted from *ad valorem* duty granted by that Act, to be exempted from the *ad valorem* duty imposed by this Act; and charged with the ordinary duty of 1*l.* 15*s.* in lieu thereof, together with the progressive duty of 1*l.* 5*s.*, if any be chargeable thereon: under and subject, nevertheless, to the conditions and regulations prescribed by that Act.

Property sold before 12 April, 1808.

Sect. 31.—Releases, and other conveyances of annuities or rent-charges, made in the original grant thereof subject to be redeemed, or repurchased, to be, on the repurchase thereof, exempted from the *ad valorem* duty on the sale of property, and chargeable only with the ordinary duty on deeds or instruments of the like kind, not upon a sale.

Reconveyances of annuities.

The following is an Abstract of the Special Provisions contained in the Notes under the Title "CONVEYANCE" in the Schedule.

Consideration to be expressed.

The purchase-money to be truly expressed in the *principal* instrument of conveyance.

Property purchased at one price conveyed by different deeds.

Where property of different tenures or holdings, or held under different titles, contracted to be sold at one entire price, is conveyed to the purchaser in separate parts, by different instruments, a distinct sum must be inserted, as the price for the portion conveyed by each instrument, and the duty paid accordingly.

Where conveyed to different persons.

Where property contracted to be purchased by several persons, at one entire price, is conveyed in parts, to the several purchasers, by separate instruments, for distinct parts of the purchase-money, the conveyance to each purchaser is to be charged with *ad valorem* duty on the sum stated therein. But, if separate parts be conveyed to different persons by the same instrument, the duty is to be charged on the aggregate amount of purchase-money therein mentioned.

Sub-purchaser.

Where a person having contracted for the purchase of property, but not having obtained a conveyance, contracts to sell to another, and the same is conveyed, immediately, to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty on the consideration paid by the sub-purchaser.

And where, in case of any such sub-contracts, the property is conveyed by the original seller to different persons in parts, *ad valorem* duty is to be charged on each conveyance, in respect of the consideration therein, without regard to the original purchase-money.

And in all cases of such sub-sales, the sub-purchasers, and the persons immediately selling to them, are to be deemed the purchasers and sellers within the 48 Geo. III. c. 149.

But, where the sub-purchaser takes a conveyance, charged and duly stamped with *ad valorem* duty on his purchase-money, of the interest of the person selling to him, any deed afterwards made by the original seller is to be exempt from *ad valorem* duty, and to be stamped as an ordinary deed.

One conveyance by several sellers.

Where property contracted to be purchased of different persons, at separate prices, is conveyed by one instrument, the *ad valorem* duty is to be charged on the aggregate amount of the purchase-moneys.

Where property sold subject to a mortgage, &c.

And where property is sold and conveyed in consideration of any money charged thereon, and then due to the purchaser; or subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum to be afterwards paid by the purchaser, such sum or debt is to be deemed the purchase-money or part thereof.

Principal instrument.

What is to be deemed the principal instrument of conveyance, *viz.* :—

Bargain and sale enrolled; and also release, or feoffment.

Where, in England, the conveyance is by bargain and sale enrolled, and also by lease and release, or feoffment, the release or feoffment is to be deemed the principal; and the bargain and sale is to be stamped as an ordinary deed; but is not to be enrolled unless stamped with a denoting stamp.

Lease and release; and also feoffment.

Where the conveyance is by lease and release, and also by feoffment, the release is to be deemed the principal; the feoffment to be charged with the ordinary duty, but not to be available unless stamped with the denoting stamp.

Copyhold. Where bargain and sale to be the principal.

COPYHOLD OR CUSTOMARY ESTATES.—Where conveyed by bargain and sale, by the Commissioners of Bankrupt, or under a power, or by Act of Parliament, or otherwise, where a surrender is not necessary, the bargain and sale to be deemed the principal instrument.

In other cases, the surrender, or voluntary grant, or the memorandum thereof, if made out of Court, or the copy of court roll if made in Court, to be deemed the principal. *Where surrender, grant, or copy.*

Copies of court roll of surrenders and grants made in Court after the 10th October, 1808, but not of those before, to be charged. *Surrenders, &c. before 1808.*

Grants, and copies of grants for life, to be charged, as well as those for a greater interest. *Grants for life.*

In Scotland.—In case of a disposition or assignation, and any other instrument or writing to complete the title, the disposition or assignation to be deemed the principal. *Scotland. Disposition or assignation.*

Annuities.—Where *upon the sale of any annuity, or other right not before in existence*, the same is not created by actual grant, or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond, or other instrument, to be liable to the same duty as a grant or conveyance. *Annuities. What instruments to be charged.*

Leases or Tacks.—Where a rent of 20*l.* or upwards, is reserved, a further duty to be charged.—See "Lease." *Leases.*

Progressive Duty.—For every fifteen folios complete, beyond the first, 20*s.* *Progressive duty.*

Several Instruments.—Where there are several instruments for completing the title, such as are not liable to *ad valorem* duty are to be charged under any general, or particular description, in the schedule. *Several instruments.*

And where, *in any case* not *expressly provided for*, a doubt arises which is the principal, the parties may determine for themselves, which shall be so deemed, and pay the duty accordingly; and, if necessary, the others may be stamped with a denoting stamp. *Parties may determine in some cases.*

Duplicates.—Where there are duplicates of instruments chargeable with *ad valorem* duty exceeding 2*l.* one of them only is to be charged therewith, the other to be charged with the ordinary duty; and the same may also be stamped with a denoting stamp. *Duplicates.*

Conveyance *and other matter.*—Where an instrument operating as a conveyance on sale, also operates as a conveyance of any other than the property sold, by way of settlement, or for any other purpose; or, also, contains any other matter or thing, besides what is incident to the sale and conveyance of the property sold; or relates to the title thereto; the same is to be charged with such further duty as a separate deed, containing such other matter, would have been chargeable with, exclusive of the progressive duty. *Conveyance of property, with other matter contained in the deed.*

Ireland.

The provisions contained in the notes before abstracted, by the operation of the 5 & 6 Vict. c. 82, extend to Ireland, so far as the same are applicable to instruments in that country. The other enactments relating, peculiarly, to conveyances upon sale, in Ireland, are 56 Geo. III. c. 56, ss. 103 to 107. See "Appendix."

Instruments charged.

THE INSTRUMENTS charged with stamp duty under the present head, are, *Conveyances upon the sale of property;* which description suggests three essential constituents, *viz.*:

1st. There must be a *conveyance.*

2ndly. The conveyance must be upon *a sale,* in the popular acceptation of the word, that is, for a pecuniary consideration.

3rdly. The subject-matter of the sale and conveyance must be *property,* within the description mentioned in the Act.

FIRST.—THE INSTRUMENT MUST BE A CONVEYANCE.

Conveyance.

Award.

In *Doe dem. Lord Suffield* v. *Preston* (*a*), the defendant, who was entitled to allotments under an Inclosure Act, agreed with the lessor of the plaintiff to exchange them for other lands, receiving, in addition, 2000*l.*; and the Commissioners, under a power so to do contained in the Act, awarded such allotments to the lessor of the plaintiff; it was contended, on a question relating to the land awarded, that the award should have been stamped with the *ad valorem* duty, as a conveyance upon sale, in respect of the 2000*l.*, but the Court was of opinion that the award was not a conveyance, chargeable with duty, as such.

Agreement to present to a living.

By an agreement, in consideration of 7000*l.*, parties agreed to present to a rectory, on the next vacancy, such person as *A. B.* should nominate or appoint; and, forthwith, to furnish an abstract, and execute a conveyance to him. It was contended, that as the Court of Chancery would, in the event of a vacancy, have decreed the purchaser the next presentation, the agreement was liable to *ad valorem* duty, as a conveyance; but it was held, that notwithstanding the purchaser would, in equity, be entitled to present, the instrument was not a conveyance, chargeable with *ad valorem* duty (*b*).

Agreement for sale of coal.

Phillips v. *Morrison* (*c*), was an action of assumpsit for coals sold by the plaintiff, and another, to the defendants. At the trial the plaintiffs tendered an agreement, which stated, that *D P.* and the plaintiffs agreed to sell to the defendants, all the two upper

(*a*) 7 B & C. 392; 1 M. & R. 713. & C 506

(*b*) *Wilmott* v. *Wilkinson*, 6 B. (*c*) 13 L. J R (N. S.) Exch. 212.

veins or beds of coal under certain lands, containing 16 acres, more or less, at 77*l.* per acre, to be paid for as follows, *viz.*: 100*l.* on the day of the date, the remainder by equal quarterly payments of 25*l.* each; it was, also, stipulated, that if the defendants should work more of the coal, in any year, than 100*l.*, after such rate, the defendants should pay for such excess, quarterly, after the rate aforesaid. The instrument was stamped with 35*s.*; it was objected, that it should have had a conveyance stamp of 12*l.*, as for a consideration amounting to 1000*l.* and not amounting to 2000*l.*; but it was received, and a verdict returned for the plaintiffs, with leave for the defendants to move to enter a verdict for themselves. On motion being made, it was insisted by counsel, that, although, the instrument was, in terms, an agreement only, no further conveyance appearing to be contemplated, yet that the transaction amounted to a sale; and, as the coals had been conveyed, an *ad valorem* stamp was necessary. But, the Court held, that the instrument did not fall within the description of those charged with *ad valorem* duty; it could not be said that the coals were "granted, leased, &c., or otherwise conveyed to, or vested in the purchaser." One of the learned Barons is reported to have observed, somewhat facetiously, that "the party who seeks to bring an instrument within the Stamp Act, must show, clearly, that it falls within it, he must, so to speak, hit the bird in the very eye; we can make no intendments in favour of the liability."

Agreement for sale of herbage.

At a sale by auction, in April, 1835, a lot, described as herbage of a certain close, was purchased for 45*l.*, under conditions, that the highest bidder should be entitled to possession on paying down a per-centage, and giving a note for the remainder; to keep possession till the 29th September. The purchaser signed the conditions, which were stamped with 20*s.*; but which, it was argued, should have been stamped with 35*s.*, as a lease not otherwise charged; the Court, however, held that the duty was payable under the head "Conveyance," where the word lease was mentioned, and that, therefore, 20*s.* was sufficient (*d*).

No doubt this writing was stamped as an agreement; it is not probable that it occurred to the mind of any of the parties, that *ad valorem* duty was chargeable on it as a conveyance; had the purchase-money amounted to 50*l.* it would have been insufficiently stamped.

It is to be understood that a lease, where a premium is paid,

(*d*) *Cattle* v. *Gamble*, 5 Bing. N. C. 46; 7 Dowl. 98, 1 Arn 405.

being thus referred to the head, "CONVEYANCE," all the regulations applicable to instruments there chargeable, attach, as a necessary consequence; and, therefore, the omission to insert the premium, involves the forfeitures and disabilities attending the like default, in the case of an ordinary conveyance upon sale. See *Doe* v. *Lewis*, page 227.

Agreement for transfer of leases, operating as an assignment.

In *Parmenter* v. *Webber* (*e*), the defendant, the owner of the leases of two farms, entered into an agreement, under hand, with the plaintiff, for disposing of the same to him; the plaintiff to pay 200*l.*, and to remain tenant to the defendant; it was stamped with 2*l.* The Court held, that, according to the legal effect of the agreement, it amounted to an absolute assignment by the defendant, so as to operate as a surrender of the whole of his term under the two leases. Although the stamp on the instrument was the subject of remark, no question could well have been raised upon it; for, whatever character, or effect, was given to the writing, whether that of an assignment upon sale, or an agreement, the stamp was sufficient. The word "surrender," cannot be considered as used in its legal sense, nor can it be correct to treat it as in the nature of a renunciation.

Memorandum of transfer signed by both parties, a conveyance.

The following instrument, under the hands of both parties, was held to be a conveyance, upon sale, chargeable with *ad valorem* duty; *viz.*, "*A. B.* has sold to *C. D.* all the goods, stock in trade, and fixtures, in a certain shop, for 50*l.*"

Mr. Baron *Parke* observed, that it was a conveyance, notwithstanding in the past tense; it was a record of the transfer, and would be exempt from duty as relating to a sale of goods, wares, and merchandise, but for the fixtures, which, although chattels, were not goods, wares, or merchandise; the exemption under the head "AGREEMENT" extending to all stamp duties (*f*).

Certificate by seller of transfer of shares in a mine.

Cost-book principle.

But in an action against a shareholder in a Cornish mine (*g*), for goods supplied to the mine, the following document, given in evidence to prove the defendant a shareholder, was held not to be a transfer of shares, and therefore not chargeable with stamp duty, as such, *viz.*:—

"To Mr. *G. W. S.* of Callington, Purser of the Wheal Mary Mine, in the parish of Calstock.

"I, *E. L.*, for the consideration named and expressed in a deed

(*e*) 2 Moore, 657.
(*f*) *Horsfall* v. *Key*, 17 L. J. R. (N. S.) Exch. 266.
(*g*) *Toll* v *Lee*, 13 Jur 614

of transfer bearing date the 20th September, do hereby certify, that I have assigned and transferred to Mr. *J. D. Lee*, three 256th parts or shares of and in, &c.; and of and in all tools, &c.; moneys in the purser's hands, &c.; together with all and singular the dividends, &c.; and all interest, profit, &c.; estate, right, title and interest of me the said *E. L.*, &c.; to hold unto the said *J. D. L.*, his executors, &c., subject to the same rules, orders, &c., as I held the same. *E. L.*

"Witness, &c.

"I, the said *J. D. L.*, do hereby agree to accept and take the said shares, subject, &c. Witness my signature, the 29th day of September, 1845. *Jno. D. Lee.*

"Witness, &c."

The conduct of the mine was upon what is called "the cost-book principle;" that is, the names of the shareholders are entered in a book, and all persons whose names are found in it are entitled, exclusively, to share the profits. The document in question was stamped with 2*s.* 6*d.* as an agreement, and it appeared that such a document was the usual mode of effecting a transfer of shares.

Mr. Baron *Parke* said, "Whatever a party admits is evidence against him; and this paper was, therefore, receivable against the defendant, as evidence of there being some other deed of transfer, supposing such necessary to make him liable. But of the value of that evidence the jury were to judge, and you might have gone strongly to them, that the non-production of that deed showed that what is stated in this paper is untrue." His Lordship, previously, observed, that it looked very like an attempt to evade the stamp laws; but that the defendant would have a difficulty in availing himself of the contrivance, if he sought to use the document in his own favour. Suppose, his Lordship continued, the concern had turned out a productive one, and the defendant were to proceed against the purser for his share in the profits, his having no conveyance made to him of a share would go to show that he was not entitled to any.

Secondly.—The Transaction must be a Sale.

Sale. Conveyance to a son: family arrangement.

A father, by deed, reciting that he had resolved to give and assure unto his son, as well in consideration of natural love and affection, as, also, in consideration of the provision the son had

that day made, (by bond,) of 1500*l.*, in augmentation of the portions or fortunes of his sisters, conveyed certain estates to his son in fee; it was contended that the deed was subject (under the 48 Geo. III. c. 149,) to *ad valorem* duty as a conveyance, but the Court held that the transaction was not a sale within the contemplation of the legislature, but a family arrangement (*h*).

Grant of annuity in consideration of a settlement of money.

By a marriage settlement, in consideration of 4000*l.*, advanced by the father of the lady as a portion, the uncle of the intended husband covenanted to pay to trustees, for the use of the husband and wife, during their joint lives, an annuity of 800*l.*; it was insisted that this was a purchase of an annuity, and subjected the deed to a stamp duty of 45*l.*; but the Court was of opinion that it was not a sale, within the language of the Stamp Act. (*i*).

And, in Ireland, in consideration of 200*l.* paid by the lady's father to the intended husband, on their marriage, the latter's father conveyed to him certain property; it was held by Mr. Serjeant *Greene* that the deed was not subject to *ad valorem* duty as on a sale (*k*).

Grant of annuity in consideration of giving up a life-interest in stock.

A person, having a life-interest in government stock, agreed to a sale of a portion of it, for the benefit of the husband of the reversioner, he agreeing to pay the tenant for life an equivalent annuity, to be secured by his bond and warrant of attorney, and also by an assignment of a policy of insurance on goods shipped, and the money to arise therefrom. In pursuance of this arrangement a deed was executed, reciting as above, and, that the bond and warrant of attorney had been given; and whereby, for better securing the annuity of 64*l.* 8*s.* 0*d.*, and in consideration of 1288*l.* 14*s.* 9*d.*, the produce of the stock, paid to the husband, the policy, money, &c., were bargained, sold, and assigned to trustees; and the husband covenanted, that in case no money arose from the policy, he would, on his return from India, pay the trustees a sufficient sum to produce the annuity. The Court held that the transaction could not be considered a sale of an annuity, in the ordinary sense and acceptation of the words, as they must be taken to have been used by the legislature (*l*).

Assignment on a sale by the sheriff under an execution.

An assignment to a purchaser, by the sheriff, of property sold under an execution, is liable to *ad valorem* duty, as conveyances in other cases of sales. This was disputed in a case in the Exche-

(*h*) *Denn dem. Manifold* v. *Diamond*, 4 B. & C 243; 6 D. & R. 328.

(*i*) *Massey* v. *Nanney*, 3 Bing. N. C. 478.

(*k*) *Re Kerry Glazier*, Irish Cir. Rep. 140.

(*l*) *Blandy* v. *Herbert*, 9 B. & C. 396.

quer in Ireland (*m*), in which Lord Chief Baron *Brady* observed, "It is true we are not to bring parties within the meaning of an Act imposing duties on the subject, unless its words be clear and unambiguous; but on the other hand, we are not to seek, by a strained or forced construction of the plain language of the Act, to create exemptions not provided for by the legislature."

Property.

THIRDLY. — THE SUBJECT-MATTER MUST BE PROPERTY *within the meaning of the Act.*

Judgment-debt.

Warren v. *Howe* (*n*), is a case which is frequently the subject of discussion; it, properly, falls under the head "MORTGAGE;" but, as it was, somewhat singularly, in a measure, determined with reference to "CONVEYANCE upon sale;" and, as it must be treated as an authority, if any, upon both subjects, it will be right to glance at it here. The defendant being indebted to the plaintiff in 50*l.* 5*s.*, assigned to him, by deed, a judgment debt of 168*l.* as a security; the deed was stamped with the *ad valorem* duty of 30*s.*; which, supposing it to be chargeable either as a conveyance upon sale, or as a mortgage, was sufficient; but the Court held that a debt was not *property*, within the meaning of the Act, and that, therefore, the assignment should have been stamped with 35*s*, as a deed not otherwise charged. The propriety of this decision will be found, also, discussed under the head "MORTGAGE"; the case, however, may be, properly, further controverted under the present head. Lord *Tenterden*, after quoting the subject-matters of sale specified in the Act, *viz.*, "Lands, tenements, rents, annuities, or other property," observed, that the statute enumerated things the subject of sale, and usually converted into money, the expression, "other property," applying, only, to property of the *same description*. His Lordship, probably, was not afforded the opportunity of forming his judgment upon a due consideration of the Act, his view was confined to the words thus, immediately, before him; and, upon the same principle that he gave effect to the words "other property," would he have decided, also, upon the meaning of the word "annuities;" which, following, as it, immediately, does, that of "rents," he would have interpreted to mean, annuities charged upon lands; and, indeed, even, without regard to its juxta-position, he must, upon the principle laid down by him, have excluded the

(*m*) *Lessee Nagle* v. *Ahern*, 3 Irish L. R. 41.

(*n*) 2 B. & C. 281; 3 D. & R. 494.

idea of personal annuities; but, that this would have been erroneous, is manifest, from the provision to be found amongst the clauses coming after the scale of duties, that "where *upon the sale of any annuity, or other right not before in existence*, the same shall not be secured by actual grant, or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond, or other instrument by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance." This clause is not, either in express terms, or by intention of the legislature, a declaration of the meaning of the word "annuities," used in the principal clause, although it is tantamount to it; it assumes a meaning already attached to it, merely declaring that, whatever may be the form of writing, evidencing the intention of the parties, such writing shall be charged as a conveyance; and thus showing, that it was intended by the legislature, that the words used to designate certain property, should not have the limited interpretation which has been put upon them. It cannot, therefore, be denied that an annuity, not founded upon any grant, but secured by bond only, or warrant of attorney, is *property* within the meaning of the Act; and if it be assigned for valuable consideration, it still retains that quality; and, it may be asked, wherein consists the distinction, in this respect, in point of fact, or of law, between a judgment debt upon a common money bond, and that upon an annuity bond?

Pursuing the *ejusdem generis* principle, the Court must have been driven to say, that Government Stock, or Bank, South Sea, or East India Stock, was not property within the Act; the circumstance, however, of the transfers of such stocks being expressly exempted from the *ad valorem* duties, shows that they would, otherwise, have been within the purview of the enactment. Again, for the duties on transfers of shares in the stock and funds of any other corporation, company, or society, upon sale, or by way of mortgage, or security, reference is, expressly, made to those heads respectively, from that of "transfer," without its appearing to have been considered necessary to declare that they should be charged, (as in other cases,) with the same duties as those instruments to which reference is made.

It is, with great deference, submitted, that however the Courts might be disposed to adopt the decision in *Warren* v. *Howe*, the principle upon which it proceeded cannot be sustained; but that whatever is dealt with as property, and is the subject of sale or

mortgage, is property within the meaning of the Act, and that the instrument by which the transfer is effected, is chargeable with the *ad valorem* duty, unless expressly exempted. As a proof of the want of confidence in the decision, it may, it is conceived, without impropriety, be mentioned, as a fact within the personal knowledge of the writer, that one of the learned Judges, who had himself taken a part in it, desired to have the views of the Stamp Office upon the case, in reference to a transfer, to himself, of a policy of insurance, by way either of sale or mortgage; it is right, however, to add, that his Lordship elected to take "the risk" of foregoing the *ad valorem* duty

Commission.

The case of *Pooley* v. *Goodwin* (*o*), was that of an assignment by an architect, for the benefit of two creditors, whose debts amounted together to upwards of 1000*l.*, of money due to him by way of commission, under a building contract; in which the Court held, that the conveyance was absolute; and that, as the commission did not amount to 500*l.*, the stamp on the deed (5*l.*) was sufficient. Admitting the opinion of the Court, as to the deed not being a security, but an absolute conveyance, to be correct, nothing can be said in favour of the view taken as to charging it with stamp duty as a conveyance upon sale, with reference, not to any purchase or consideration money, expressed in it, but to the value of the thing conveyed; and that, not as it appeared in the deed itself, but, as it was shown by extrinsic evidence, contrary to the express provisions of the Stamp Acts, as to conveyances upon sale, and to the general principle of the stamp laws, that instruments shall speak for themselves as to the duties they are liable to; such duties attaching at the moment of execution, and not depending on any subsequent calculation, or contingency. If this case of *Pooley* v. *Goodwin* be an authority at all, it may be said to supersede that of *Warren* v. *Howe*; for, if a simple-contract debt, as the commission was, be property within the Stamp Act, as it was there treated, *à fortiori* a debt of record, as in *Warren* v. *Howe*, is property. See under the head "MORTGAGE;" where the propriety of this decision is more fully discussed.

Belcher v. *Sikes* (*p*), is another case as to what is *property*, under the head of "Conveyance."

Benefit of contracts.

Two persons, having entered into contracts with the Victualling Office, executed an indenture, whereby they agreed to dissolve their partnership therein; one of them, only, to retain the benefit

(*o*) 4 A. & E. 94; 5 N. & M 466. (*p*) 6 B. & C. 234.

of the contracts; the share and interest of the retiring partner being estimated at 50,000*l.*; and, in consideration of such dissolution, and of the payment of the said sum of 50,000*l.*, in money and bills, to the latter, he bargained, sold, assigned, transferred, set over, and confirmed unto the other, all his said share and interest of and in the moneys, goods, chattels, stock and effects whatsoever, belonging to them, as such co-partners. The Court, referring to *Warren* v. *Howe*, from which the present case could not, they thought, be distinguished, were of opinion that the subject-matter of the contract between the parties was not property within the meaning of the Act.

Policy.

Blandy v. *Herbert* (*q*) may here be again referred to, as, in some degree, opposed to *Warren* v. *Howe*. Lord *Tenterden* was of opinion, that a policy of insurance on goods shipped, *no loss having occurred*, could not be considered *property*, within the meaning of the 55 Geo. III. c. 184; from which it is to be inferred, that, if a loss had happened, which would have given an absolute right to recover upon the policy, such right would have been property. If there be anything in this observation, the case goes the length of establishing, that money due on a policy of insurance, whether for a life, or, after a loss, upon a ship, or, it may be added, against fire, is property, which, if assigned upon a sale or mortgage, subjects the instrument to *ad valorem* duty.

Agreement to relinquish a trade, and for the occupation of the house, and use of the fixtures.

Lyburn v. *Warrington* (*r*), was an action of debt on a covenant contained in a deed, whereby it was agreed, that the plaintiff should relinquish his trade of a butcher in favour of the defendant, who was to be admitted into the house occupied by the plaintiff, and to be allowed to carry on the business there, for ten years, in the joint names of the plaintiff and himself; and the defendant was to have possession of the whole house, with the exception of one room, and also the fixtures. For this the defendant paid 1000*l.* upon the execution of the deed, and, further, covenanted to pay 1000*l.* per annum for ten years. It was objected for the defendant, that the deed ought to bear an *ad valorem* stamp under the 48 Geo. III. c. 149, as a conveyance upon sale, and not a common deed stamp; for, since the possession of the house was given for ten years, and the fixtures were included, the transaction was to be considered a sale of these interests. But, *per* Lord *Ellenborough*, "the agreement is, that the defendant shall have these as auxiliary to carrying on the business; and, since there is no mention of any

(*q*) Page 222, *ante*. (*r*) 1 Stark. 162.

distinct substantive property, exclusive of the trade, I cannot think that, in fair construction, the case falls within the operation of this clause of the Act."

Duty charged on the consideration expressed.

THE Stamp Duty, in the case of a sale, is intended to be a tax on the value of the property; but it is not, in terms, imposed on the price agreed to be given; it is charged on the amount of the purchase or consideration money expressed, whether truly or not, in the instrument of conveyance.

Deed not void if consideration not inserted.

The understanding is by no means uncommon, that a deed is rendered invalid by the omission to set forth the true consideration, in the case of a purchase; there is, however, no foundation for any such proposition, although arguments in support of it have, occasionally, been addressed to the Court. The legislature has not thought proper to make any such provision, (which would indeed be of too serious a character,) but has adopted the course of imposing severe penalties upon the parties to the fraud, more particularly upon the attorney, or other person professionally employed. See 48 Geo. III. c. 169, ss. 22 to 26, *ante*, p. 212. To these penalties the Courts always refer, when cases of the kind arise (*s*).

Lease with premium.

The case of *Doe* v. *Lewis*, was that of a lease, granted in consideration of a rent, and, also, of a premium of 200*l.*, but the latter was not specified; and it was contended, that inasmuch as, under the head "Lease," a duty was required to be paid in respect of the consideration for granting the lease, and nothing was said as to the consideration being expressed, such duty was payable, whether the premium was mentioned or not; but the Court held, that a lease, with a premium, was referred to the head "*Conveyance*," and that if the premium was not mentioned, the duty was not payable, but the parties were liable to a penalty. See also *Doe dem. Higginbotham* v. *Hobson* (*t*), where, in a lease, a sum of 3000*l.* was omitted to be inserted, but which the jury found to have been paid for the good-will, and not for the lease. It was contended that it was, indirectly, paid for the lease.

Covenant to

A covenant by the lessee in a lease, to lay out a certain sum of

(*s*) *Robinson* v *Macdonnell*, 5 M & S. 228; *Duck* v. *Braddyll*, 13 Price, 445; McClel. 217; *Doe dem Kettle* v. *Lewis*, 10 B. & C. 673.

(*t*) 3 D & R. 186.

lay out money in building.

Lease to sub-purchaser, money paid to intermediate party omitted.

Building leases.

money in building on the property demised, is not a consideration upon which *ad valorem* duty attaches (*u*).

The profession has, during a period of several years, been deceived, and led into a highly dangerous course of practice, by the report of a case in the books, intrinsically of no value, whatever, but readily laid hold of, as favouring a mode of evading stamp duty, and relied upon as a protection against the serious consequences of such evasion. So far, however, as it seemed a pretence for such a course, it has, by a recent decision of the Court of Exchequer, in a prosecution for penalties, been wholly annihilated. The case alluded to as giving rise to this unlawful practice is that of *Boone* v. *Mitchell* (*x*). It was an action of *assumpsit*, on a contract, whereby the plaintiff agreed, in consideration of 170*l.*, to assign to the defendant, a lease of certain premises; the defendant paid a part of the purchase-money, and was let into possession; the action was brought for the balance. The declaration stated, that, in consideration that the plaintiff, at the request of the defendant, would procure the governors of a certain charity to grant a lease to the defendant, he, the defendant, undertook to pay the plaintiff 170*l* ; it averred that the lease was procured, and stated a breach in non-payment It appeared in evidence, that the plaintiff, having an agreement for a lease from the governors, contracted with the defendant to assign the lease to him, but that the lease, instead of being granted to the plaintiff, and assigned by him to the defendant, was granted to the defendant, the plaintiff being a party testifying his consent, without any mention being made of the 170*l.* The deed was objected to under the Stamp Laws, on the ground of the omission to set forth this consideration; such objection going to the validity of the instrument

For this objection there was no foundation; but the judgment proceeded on the ground that the point affected the validity of the lease; and as if the question was, whether the deed could be sustained, or not. The plaintiff's right of action depended upon the sufficiency of the instrument; but, as the lease was unquestionably good, in reference to the stamp laws, whether the consideration ought to have been, or was, stated, or not, no point really arose, which it was necessary to decide under those laws. The Court, however, is made to say, "that the consideration passing between the lessor and lessee, is all that the Stamp Act requires to be set

(*u*) *Nicholls* v. *Cross*, 13 L. J. R. (N. S.) Exch. 244; 14 M. & W 42.

(*x*) 1 B. & C. 18.

out; that it could not have been intended that the lease should be void, by the lessor's omitting to state a consideration which he might not, and perhaps could not be aware of." It was never intended by the legislature that any conveyance should become void, by reason of omitting to state a consideration upon which the amount of stamp duty is made to depend. The protection of the revenue is not sought by affecting the title of a purchaser, although he might, himself, be the author of a fraud contrived for his own immediate benefit; such protection is endeavoured to be afforded by penalties, and, more particularly, by visiting legal practitioners who are instrumental in committing such frauds, not only with heavy penalties, but with the far more serious consequence of disability to practise in future; which consequence, no Court of law or equity, whatever may be the circumstances, can remove; the legislative enactment amounting to a total prohibition (*y*). In *Boone* v. *Mitchell* no reference, whatever, was made to the special provisions applicable to the transaction carried into effect by the deed before the Court; the remark alluded to was, therefore, made without a knowledge that the case was provided for by the Stamp Acts; had the law been brought to the notice of the Court, although the result, in the particular instance, would have been the same, the deed being good, in law, the terms of the judgment would have been very different.

The case in which the practice referred to has recently been reviewed, was an information by the Attorney-General for penalties (*z*); and for the purpose of properly arguing the question of liability, a special verdict was agreed to. The facts were as follows, *viz.*: *William Haines*, being seised in fee of certain land, by a written agreement, dated 24th June, 1846, agreed with the defendant, a builder, to execute to him a lease of the land, and of the house which it was agreed the defendant should build thereon, for 99 years, at a peppercorn rent for the first two years, and at a rent of 9*l.* 5*s.* for the remainder of the term. The defendant was to lay out 600*l.* in erecting the house. The house having been built, one *E. I. Onion* contracted to buy, for 850*l.* all the estate and interest of the defendant in the property; and in December, 1846, the defendant, for the purpose of carrying into effect the contract between himself and *Onion*, procured an indenture to be made between himself, *Haines* and *Onion*, whereby

(*y*) 48 Geo. III. c. 149, s. 25, *ante*, page, 212.

(*z*) The *Attorney-General* v. *Brown*, 18 L. J. R. (N. S.) Exch. 336.

Haines leased to *Onion* the house and land in question from the 24th June, 1843, for 99 years, at the rents before specified, payable to *Haines*. The purchase-money was not stated in the indenture of lease, which was the only deed whereby the estate, &c., of the defendant in the property were conveyed. The lease was stamped with 1*l.* only, being the *ad valorem* duty on the rent; and the information was filed for the recovery of a penalty of 50*l.* and also of 40*l.*, being five times the amount of the excess of duty which would have been payable if the purchase-money, paid by *Onion* to the defendant, had been inserted.

The Court held that the case fell within the schedule to the 55 Geo. III. c. 184. The transaction was a sale by the defendant to *Onion*, and the lease from the freeholder was a conveyance upon such sale, and that the defendant and *Onion* were liable for not truly inserting the consideration. Judgment was, accordingly, given for the Crown.

It is to be feared that recourse will be had to fraudulent means to evade the duty which is properly payable in transactions of this nature; indeed, it has already come under the observation of the writer, that, by falsifying facts in the recitals, a lease, granted by the freeholder, at the instance of the builder, to the purchaser of a house under circumstances similar to those exhibited in the last case, the *ad valorem* conveyance duty has been avoided; but it will scarcely be necessary to offer to practitioners who have any regard for their reputation, or their safety, a caution against involving themselves in the ruinous consequences which may attend a connivance at any such irregularity. The danger in which such a course will place all who are engaged in it will be apparent when it is considered, that, in every instance, there will be several persons, besides the professional man, amenable to prosecution, any one of whom may not only indemnify himself, but obtain reward, by giving information against the others.

Sale of equity of redemption

On the sale of an equity of redemption the mortgage-money is to be deemed a part of the purchase-money, and is to be charged with *ad valorem* conveyance duty accordingly; which is so directed in these terms, *viz.*: "Where any lands or other property shall be sold and conveyed in consideration wholly, or in part, of any sum of money charged thereon by way of mortgage, wadset, or otherwise, and then due and owing to the purchaser; or shal be sold and conveyed subject to any mortgage, wadset, bond or other debt, or to any gross or entire sum of money to be afterwards paid by the purchaser, such sum of money or debt shall be

deemed the purchase or consideration money, or part of the purchase or consideration money as the case may be, in respect whereof the *ad valorem* duty is to be paid." It was essential that this should be so, otherwise a transfer of the property might take place, on an actual sale, without the payment of the proper *ad valorem* duty, and a door would be open to serious frauds on the revenue, there being no *ad valorem* duty payable on the redemption of a mortgage. But it has been, sometimes, inquired, whether, supposing a mortgagee to take a conveyance of the equity of redemption without releasing his debt, or a stranger to purchase the equity of redemption without covenanting to pay the mortgage debt, the case would, in either instance, be within the provision alluded to. The former would, probably, only happen where the debt exceeded the value of the property in mortgage, and where the mortgagor, from his utter insolvency, did not deem the release to be a matter of importance; and the question, in such a case, is, whether the property is sold and conveyed in consideration of the money due on the mortgage. On a proper view of the case, and regarding the object and intent of the Act of Parliament (and the circumstances of its creating a charge upon the Subject, must not be allowed to interfere with the true interpretation of it), there cannot be a question, that the intention of the parties being to transfer the absolute ownership of the property, the consideration for such transfer is the mortgage debt; it is a refinement to contend otherwise, whatever may be the legal or equitable rights or remedies of the respective parties. The thing immediately dealt with is the equity of redemption, merely; and so the Act contemplates; but the whole of the premises must be had regard to, and the true consideration sought for therein. So, again, in the other case suggested, that of a stranger purchasing the equity of redemption without covenanting to pay the mortgage money, there cannot be a reasonable doubt that this is within the provision as to a sum to be afterwards paid by the purchaser; it may, indeed, be said to be *literally* within it. Clearly, the purchaser is, in such a case, the person to pay the debt, if it is ever to be paid; had he covenanted with the mortgagor to pay it, that circumstance would not have affected the relative positions of mortgagor and mortgagee; and if the equity of redemption is ever to be available the purchaser must pay off the debt; such debt is, therefore, certainly one to be afterwards paid by the purchaser within the provision in question upon any interpretation to be given to it.

Consideration reduced to avoid stamp duty.

By a reference to the case of *Shepherd* v. *Hall* (*a*) it will be seen, that fraud is not to be imputed when a less sum than that originally agreed for is inserted in the deed, provided it be the amount finally agreed upon, and *bonâ fide* passing, notwithstanding the object of such reduction be to avoid a higher stamp duty. The case referred to was that of an apprenticeship, where a reduced sum was inserted in the indenture as the premium paid.

Conveyance for the benefit of several purchasers at one price.

An annuity of 70*l.* was granted to *C.*, but it was stated in the deed, and in the memorial, that part of the purchase-money belonged to *K.*, and that *C.* would stand possessed of the annuity on behalf of himself and *K.*, in the proportions of 60*l.* and 10*l.* The deed and memorial were stamped as for one annuity, only; which was considered sufficient (*b*). Had the deed in this case been subsequent to the 55 Geo. III. c. 184, it would have been within the clause in the schedule, under the head "CONVEYANCE," which provides that the *ad valorem* duty shall, in such cases, be charged upon the aggregate, as in the following instance. The lessee of certain salt works agreed to grant an annuity of 1050*l.* to *M. R. K.*, in consideration of 14,500*l.* The latter, being unable to raise the whole purchase-money, contracted with seven other persons to take portions of the annuity, for different portions of the money; and the lessee, in consideration of 14,500*l* granted to trustees eight several annuities, making in all 1050*l.* in trust for the grantees respectively, charged on the property. The deed was stamped for the aggregate; it was contended that it should have had a stamp for the consideration for each annuity; but the Court held that it was properly stamped; it was expressly within the Act (*c*).

Several matters in the same deed.

One of the most difficult questions to encounter under the stamp laws, is that of the liability to more than one duty, of an instrument embracing several matters; it will be found treated on at large in the chapter entitled "INSTRUMENTS." Special provision is made upon the subject in reference to conveyances upon sale, (as well as in a few other instances,) by the last note to be found under that head in the TABLE (*d*).

Conveyance containing matter not incident to the

R. contracted for the purchase of certain copyhold property, and to enable him to complete the purchase, he borrowed 2000*l.* of *C.*, to whom he was to secure, by bond, an annuity of 210*l.* for

(*a*) 3 Camp. 180; *ante*, page 80.
(*b*) *Cook* v *Jones*, 15 East, 237.
(*c*) *Hogarth* v *Penny*, 14 L J. R (N. S.) Exch. 345; 14 M. & W. 494
(*d*) See also page 216, *ante*.

his life; a part of the property was, in 1814, in consideration of 1250*l.* surrendered to the use of *C.*, "an annuitant by bond" and, subject thereto, to the use of *R.* The surrender was stamped with a 10*l.* stamp, sufficient to cover purchase-money amounting to 1000*l.* and not amounting to 2000*l.*; but it was objected that there ought to have been some stamp in respect of the annuity. No bond was given till 1818. The Court was of opinion that the stamp was sufficient; it could not presume that the bond was not sufficiently stamped; there was no mention of the amount of the annuity. *Taunton*, J., could not see how it was a security for the annuity (*e*). The conveyance was, no doubt, in effect, a security for the annuity, but it was very vaguely expressed; and the only question was, whether the instrument operated for any other purpose than as a conveyance of the property sold, or contained any matter, besides what was incident thereto; if it did, it was, in reference to the 53 Geo. III. c. 108, s. 5, liable to a common deed stamp, as it would be now under the 55 Geo. III. c. 184.

conveyance of the property.

Security to a lender of the purchase-money.

By the deed of settlement of a Joint-stock Company it was provided, that the shares should be transferred with the consent of the company; and that the Directors should have power to make regulations respecting the form of transfer, &c.; and that every purchaser should, if required, whether specially or by a general regulation, execute a deed, covenanting with the trustees to observe all regulations affecting purchasers. By a form of transfer, approved by the company, certain shares were conveyed to a purchaser, who, by the same deed, covenanted with the trustees to observe the regulations. The deed was stamped with the *ad valorem* conveyance duty only, which the Court held to be sufficient, the covenant with the trustees being a matter incident to the conveyance (*f*). See also "COPYHOLD ESTATES" as to a covenant to surrender copyhold property, contained in a conveyance of other property sold together with it.

Covenant with third parties.

Where the original deed, purporting to be a conveyance upon sale, and stamped accordingly, is inoperative, the *ad valorem* duty need not again be paid on the deed of confirmation, although it be the only effective conveyance. In the case of a sale of property, the vendor being abroad, the conveyance was executed by an attorney under a power, and was duly stamped with the *ad valo-*

A second deed, the first being defective.

(*e*) *Doe dem. Chapean* v. *Reynolds*, 2 N. & M. 383.

(*f*) *Wolseley* v. *Cox*, 2 A. & E. (N. S.) 321.

rem duty; but the power of attorney itself not having been properly executed, the deed was defective; and, on the vendor's return to England, a deed of confirmation, by him, was indorsed on the conveyance, which also purported, in consideration of the former deed, and of 10*s*, to convey the premises; the second deed was stamped with 35*s* It was objected that it operated as a conveyance, the other deed having passed nothing; and required, therefore, an *ad valorem* duty; but the Court held a contrary opinion (*g*).

The *ad valorem* duty is charged on the *principal or only deed of conveyance.* At the time of the execution of the original deed, in this last case, none other was contemplated; it was *then* the only deed of conveyance, and was, consequently, the proper subject of charge; the second deed recited the defect in the former instrument, and was made, expressly, to remedy such defect, although it, also, purported to convey the legal estate, which might not have passed by the other deed; and, for the purposes of the stamp duty, the first deed was, still, the principal deed of conveyance Had the second deed been made without reference to the former one; and, as in that case it should have done, set forth the purchase-money, it would, then, have been liable to the *ad valorem* duty.

See "COPYHOLD ESTATES" as to the instruments charged with *ad valorem* duty, on the conveyance of property of that description.

(*g*) *Doe dem. Priest* v. *Weston*, 11 L. J. Rep (N. S.) Q. B. 17; 2 A. & E (N. S.) 249; 1 Gale & D. 582; 6 Jur. 601.

Copyhold Estates.

10 Anne, c 19

Sect 100 —Stamp duties were by this Act granted on surrenders of, or admittances to, copyhold lands or tenements in England, Wales, and Berwick, and on grants or leases by copy of Court roll, and any other copy of the Court roll of any honour or manor (except surrenders to the use of wills and the Court rolls)

Duties on surrenders, &c.

Sect 105 —See "INSTRUMENTS" as to the penalties and forfeitures by stewards, and other persons, for writing instruments without stamps

12 Anne, stat 1, c 2

Sect 49 —No copies of any surrenders or admittances to custom-right or tenant-right estates, not being copyhold, which pass by deed surrender and admittance, or by deed and admittance to be stamped the same not being within the meaning of the 10 Anne, c 19

Not to extend to custom-right, &c

5 Geo III c 46

Sect 7 —Any steward, or other officer of any copyhold Court, taking any fee for any surrender, admittance, grant, or lease, or other copy of Court roll, without, at the same time demanding and receiving the stamp duty thereon, and delivering such surrender, &c, to the person entitled, to forfeit 10*l*

Steward not demanding stamp duty, &c, to forfeit 10*l*

6 Geo III c 40

Sect 3—The intention of the last Act, and the time meant thereby for delivering the copy of any such surrender, &c, was, as soon as the same could be properly prepared and made out, after receiving the fee and stamp duty thereon, and not at the time, or immediately upon receiving the same

Explaining last Act.

Sect 4 —And for preventing doubts for the future, every such steward or officer shall be obliged to deliver the copy of such surrender admittance, grant, or lease, to the person entitled thereto, or to some person authorized to receive the same and if there be no person authorized, then, to the bailiff of the manor for the use of such person, within a year, and shall not incur the said forfeiture or penalty until after the expiration of one year See further provision in the 48 Geo III c. 149, *post*

Copy to be delivered within a year

17 Geo III c 50
23 Geo III c 58

Granting further duties on the same instruments, and also duties on copies of surrenders and admittances to custom right or tenant right estates, not being copyhold, and which pass by surrender and admittance, and not by deed

37 Geo. III. c. 90.

Granting further duties thereon.

A distinct duty to be paid for any tenement for which a several fine or fee is due.

Sect. 11.—For, and in respect of each and every copyhold tenement, of the value of 20*s. per ann.* or upwards, mentioned in any surrender, admittance, or copy of Court roll of any honour, or manor, and each and every custom-right, or tenant-right tenement, not being copyhold, (of the said value,) mentioned in any surrender, admittance, or instrument of admittance, whereupon a several fine shall be due, or payable to the lord, or a several fee shall be demanded or received by any steward, or deputy steward of such honour or manor, a distinct and several stamp duty shall be charged, according to the amount of all the duties imposed thereon. [Repealed by 44 Geo. III. c. 98.]

Penalty on steward taking a separate fine, &c., and not a separate duty.

Sect. 12.—If the steward, or other officer of any Court, demand, take or receive, any fine or fee, for any surrender, or admittance, or any grant, or lease, or any other copy of the Court roll, without at the same time demanding the stamp duty in respect of each several and distinct tenement as aforesaid, he shall forfeit 20*l.*; and the duties, whether received or not, shall be a debt due from him to the king; and if they shall not have been received, they shall also be a debt due from the party to whom any estate shall pass by force of any surrender, &c., not so stamped. [Penalty repealed by 44 Geo. III. c. 98.]

Penalty on steward receiving the duties, and not obtaining stamps.

Sect. 13.—If any such steward or officer shall receive the duties payable on any such surrender, &c., and shall neglect to purchase the proper stamps for the same, and pay the duty to the officer appointed by the Commissioners of Stamps for that purpose, for the space of three calendar months, he shall forfeit 5*l.* and double the duty.

38 Geo. III. c. 85.

Several duties not to be payable except where the tenements were separately surrendered, &c., before the last Act.

Reciting 37 Geo. III. c. 90, as to the provision relating to distinct tenements, and that great difficulties might arise in ascertaining for what particular tenements the fines or fees may be due, where several and distinct tenements had been comprised in the same surrender, &c., before that Act; enacts that distinct and several stamp duties shall not be required, except where the tenements shall, before that Act, have been surrendered &c., in and by different instruments; in which cases a several and distinct stamp, in respect of each tenement of 20*s. per annum*, which, after that Act, shall be added to any other, or mentioned therewith, to be surrendered, &c., in or by the same instrument. Any steward, or officer, including in any such instrument, several tenements, not comprised in any such instrument before that Act, without procuring the same to be duly stamped according to such Act and this Act, to be liable to the same penalty and duty as in the said Act provided. [Repealed by 44 Geo. III. c. 98.]

44 Geo. III. c. 98.

Repealing all the before-mentioned duties, and granting others in lieu.

The before-mentioned provisions in the 37 & 38 Geo. III. repealed.

Sect. 25.—And also repealing the said provisions in the 37 Geo. III. c. 90, as to charging for every copyhold, or custom-right, or tenant-right tenement, in any instrument for which a fine or fee is due or paid, a distinct and several stamp duty; and as to the penalty on the steward or other officer for not demanding and receiving the duty; and also the said provision in the 38 Geo. III. c. 85 on the same matters.

48 Geo. III. c. 149.

Repealing the duties imposed by the last-mentioned Act and granting others in lieu.

Regulations to be observed on surrendering copyhold lands in Court.

Sect 30 —Where any copyhold or customary lands or hereditaments shall be proposed to be surrendered in Court, the person proposing to surrender the same, shall deliver to the steward a note in writing, stating whether the surrender proposed is upon a sale or not upon a sale, and in the former case specifying the amount of the purchase or consideration money agreed upon for such lands or hereditaments, to the intent that the same may be inserted and set forth, in words at length, in or upon the copy of Court roll, to be afterwards made out of such surrender, pursuant to the directions of this Act; and until such note in writing shall be delivered, the lord or steward shall not accept or take the proposed surrender, on pain of forfeiting 50*l.*; and where the proposed surrender shall be upon a sale, if the steward shall neglect to insert the said purchase or consideration money in or upon the copy of the Court roll to be afterwards made out of such surrender, in words at length, he shall forfeit 50*l* ; and if upon the sale of any such lands or hereditaments, any person shall in the note so to be delivered as aforesaid, state the proposed surrender to be not upon a sale, he shall forfeit 100*l*

Penalties.

Penalty for enrolling surrenders made out of Court, or bargains and sales, unless stamped.

Sect 31.—Where any copyhold or customary lands or hereditaments shall be intended to be conveyed to any person (either upon the sale or mortgage thereof, or otherwise) by means of a surrender made out of Court, or by a deed of bargain and sale, or other deed, by Commissioners named in a Commission of Bankrupt, or by executors or others, by virtue of a power given by will or by Act of Parliament, the lord or steward shall not enrol any such surrender or deed, or accept any presentment thereof, or admit any person to be tenant of such lands or hereditaments, under or by virtue of the same respectively, unless such deed or surrender, or the memorandum of such surrender, shall be duly stamped with the duty hereby charged thereon respectively, on pain of forfeiting 50*l.*

Penalty for taking surrenders, &c., unless stamped.

Sect. 32 —If any lord, or steward, shall accept or take any surrender, or admit any person tenant of any copyhold or customary lands or hereditaments, out of Court, or make any voluntary grant of any such lands or hereditaments, out of Court, or grant any licence to demise any such lands or hereditaments, out of Court, without causing the same, or some memorandum thereof, respectively to be put in writing on vellum, parchment or paper, duly stamped with the proper duty, he shall forfeit 50*l.*

Penalties on stewards neglecting to deliver copies of Court roll within four months.

Sect. 33.—In all cases of surrenders, admittances, and voluntary grants, of or to any copyhold or customary lands or hereditaments, and in all cases of licences to demise any such lands or hereditaments, which shall be taken, made, or granted in Court, the steward shall, within four calendar months, make out and make out a copy of Court roll thereof, on vellum, parchment, or paper, duly stamped, and shall deliver the same to the party entitled thereto, or any other person authorized to receive the same, whenever the same shall be called for, after the expiration of such four calendar months; and if the same shall not be called for, then to the bailiff of the manor or honour, or to the crier of the Court, or to some copyhold or customary tenant, for the use of the party entitled thereto, at the next general Court to be holden for the said manor or honour; and for every neglect, he shall forfeit fifty pounds for every such surrender, admittance, voluntary grant, and licence to demise; and the stamp duty payable in respect of every such copy, shall be a debt to His Majesty, of the steward so neglecting, whether he shall have received the duty or not; and if he shall not have received the duty, the same shall also be a debt of the party entitled to such copy; and the steward shall also be bound to make out and deliver such copy to the party entitled, whenever afterwards the same shall be demanded, without being paid any fees for the same; and if any fees shall have been previously paid, they shall be deemed to have been paid without consideration, and the party, who paid the same, his executors or administrators, shall be entitled to recover them back, in an action for money had and received to his use, with full costs.

Stewards may

Sect. 34.—The steward, previously to the acceptance of any surrender, or

insist on fees and stamp duty before they accept surrenders, &c.

the granting or making of any admittance, voluntary grant, or licence to demise, in Court, may demand and insist on the payment of his lawful fees for the same, and for the copy of Court roll to be made out thereof, together with the stamp duty payable on such copy; and in case of non-payment the lord or steward may refuse to accept the surrender, or to grant the admittance or licence, or to make the voluntary grant, until such fees and stamp duties shall be paid.

53 Geo. III. c. 108.

Sect. 4.—Copies of Court roll made subsequent to the 10th October, 1808, of surrenders made in Court prior to that day, not to be deemed to be charged with any of the *ad valorem* duties.—See similar provision in the schedule to the 55 Geo. III. c. 184, title "CONVEYANCE," as in the TABLE.

55 Geo. III. c. 184.

Present duties.

Repealing the duties imposed by the 48 Geo. III. c. 149, and granting others in lieu, for which see TABLE, "CONVEYANCE," "COPYHOLD ESTATES." See also "CONVEYANCE ON SALE," "MORTGAGE," and, for the general regulations, "INSTRUMENTS."

1 Vict. c. 26.

For amending the laws with respect to Wills.

Where copyholds, &c., have not been surrendered to the use of a will, no person claiming under the will to be admitted without paying the same duties as if the testator had been admitted, &c.

Sect. 4 —Where any real estate of the nature of customary freehold, or tenant-right, or customary, or copyhold, might, by the custom of the manor, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person claiming to be entitled thereto by virtue of such will, shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of the surrendering of such estate to the use of the will, or in respect of the presenting, registering, or enrolling such surrender if the same estate had been surrendered to the use of the will of the testator. Provided, also, that where the testator was entitled to have been admitted to such estate, and might, if he had been admitted, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled to such real estate in consequence of such will, shall be entitled to be admitted to the same estate, by virtue thereof, except on payment of all such stamp duties, fees, fines, and sums of money, as would have been lawfully due and payable in respect of the admittance of the said testator, and of the surrendering the estate to the use of his will, or of presenting, registering, or enrolling such surrender, had he been duly admitted, and had surrendered the same to the use of his will; all which stamp duties, &c., shall be paid, in addition to the stamp duties, &c., due and payable on the admittance of the person entitled as aforesaid.

PROPERTY of copyhold or customary tenure being, for the most part, peculiar in the mode of its transmission, stamp duties have been especially appropriated to the instruments by means of which the transfer is effected, where the medium of conveyance is not a deed, liable under some other head; or, where the instrument is not, expressly, directed to be charged under any such head.

Instruments charged under the head "Copyhold."

The instruments falling within the title, "*Copyhold estates and customary estates,*" in the schedule to the 55 Geo. III. c. 184, are such, only, as relate to property of that nature "passing by surrender and admittance, or by admittance only, and not by deed;" or, in other terms, the property, to which the instruments here referred to, and charged with duty, relate, is of the description thus given by the words quoted; and as this head excludes, also, such of the instruments there described, as are otherwise charged under that of MORTGAGE, or of CONVEYANCE *upon sale,* a reference to those heads, in order to see what particular instruments are there specified, will be necessary.

Instruments charged under "Conveyance."

Ad valorem duties, only, are charged under the heads of Mortgage, and Conveyance. In the case of a *sale,* the duty is imposed on the *principal or only deed, instrument, or writing,* whereby the property is conveyed; but, amongst the instruments of which particular mention is made, none is applicable to copyhold or customary estates, (not passing by deed); but it is provided by a subsequent direction, that where any copyhold, or customary estate shall be conveyed by a deed of bargain and sale, by Commissioners of Bankrupt, or by executors, or others, by virtue of a power given by will, or by Act of Parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the *principal instrument;* and, by the succeeding note, that in all other cases of copyhold or customary estates, the surrender, or voluntary grant, or the memorandum thereof respectively, if made out of Court, or the copy of Court roll of the surrender, or voluntary grant, if made in Court, shall be deemed the *principal instrument;* and it is, also, provided, that grants, and copies of Court roll of grants, for a life or lives, are to be charged, as well as those for any greater interest. From this charge of *ad valorem* duty are ex-

cepted, *Copies of Court roll of surrenders and voluntary grants made before or upon the* 10*th Oct.* 1808; and, amongst the *exemptions*, will, also, be found the following, *viz.*: "*Surrenders, and other instruments relating only to copyhold or customary estates, whose clear yearly value shall not exceed* 20*s.*; and *voluntary grants, made by the lord or lady of any manor, for a life or lives, for a pecuniary consideration; and copies of Court roll thereof.*" These excepted and exempted instruments, therefore, not being subjected to the *ad valorem* conveyance duty, come within the general charge relating to copyhold estates. In all other cases of *sale*, the surrender, or grant, made out of Court, and the copy of Court roll thereof, if such surrender or grant be made in Court, are chargeable with the *ad valorem* duty, the same being directed to be deemed the principal instruments.

Instruments charged under "Mortgage."

Under the head "MORTGAGE," *conditional surrender* is expressly mentioned; and, by a note, the *ad valorem* duty is charged on the same description of instruments as in the case of sale; but it is provided, that where copyhold or customary lands or hereditaments shall be mortgaged together with other property, for securing one and the same sum of money, or stock, the *ad valorem* duty shall be charged on the deed or instrument relating to the other property; in this case, therefore, the instrument relating to the copyhold property is referrible to the general head applicable to such property; to which are, likewise, referred, instruments relating to admittances in the case of sale or mortgage.

Copies of surrenders, &c., out of Court not charged.

In no instance, it will be observed, is any duty at all payable on a copy of Court roll of a surrender, admittance, voluntary grant or licence to demise, made or granted out of Court.

Alienation by customary bargain and sale.

Enrolment of tenant's name, not an admittance.

In the case of *Doe dem. Earl of Carlisle* v. *Towns* (*a*), two questions arose, *viz.*: whether the estates held of certain manors were customary estates, coming within the description of property under this particular head, in the Stamp Act; and, whether the mere enrolment of a tenant's name was an admittance. The steward had been in the habit of charging fees as for an admittance, and delivering out copies of Court roll of admittance, upon stamps. The *Earl of Carlisle* was the lord of several manors, in which estates of inheritance are held, at the will of the lord, according to the custom; an ancient customary rent, and an arbitrary fine on alienation, or on the death of the tenant, and other dues, are payable to the lord. The tenants alienc by customary

(*a*) 2 B. & Ad. 585.

bargain and sale, with the licence of the lord indorsed. A Court is held twice a year, at which the tenants are called, and proclamation is made, in case of death, or alienation, for the heirs, or new tenants; and, on their appearance, their names are entered on the roll, on payment of 1*s*. A fee of 5*s*. is paid for the licence, in case of alienation. The Court of King's Bench held, that these tenements did not fall within the description of customary estates in the 55 Geo. III. c. 184, as passing by surrender and admittance, only, and not by deed; and, that the enrolment of the tenant's name was not an admittance.

Copies of Court roll not exclusively evidence of title.

The provisions (*b*) by which stewards of manors are obliged to prepare, within a limited period, copies of Court rolls, duly stamped, being regulations for fiscal purposes, merely, do not alter the rules of evidence; such copies, therefore, are not, themselves invested with an importance which they did not possess previously to the imposition of any stamp duty on instruments relating to the alienation of copyhold property; and, consequently, are not essential to the tenant's title; for, although they are evidence of it, they are not exclusively so, the Court rolls, themselves, being available to him; and attested, or examined copies, being, also, admissible.

Court rolls admissible.

In *Doe dem. Bennington* v. *Hall* (*c*), the steward produced the original book, containing entries of a surrender and admittance; it was objected, that stamped copies of the Court roll should be produced; but the Court held that the original roll was evidence; and that it could not be considered an evasion of the stamp duty, if the party chose to rely upon it, instead of taking a copy.

This case was determined before the 48 Geo. III. c. 149, but that circumstance does not affect the question.

Attested copies.

In *Doe dem. Cawthorne* v. *Mee* (*d*), and in *Doe dem. Bailey* v. *Foster* (*e*), examined copies of the Court rolls were admitted in evidence, to prove a surrender and admittance. It is stated in the former case that the copies were stamped; it is evident, however, that they were not what is, technically, called copies of Court roll, but were merely attested, or certified copies.

Examined unstamped copies.

In *Doe dem. Burrows* v. *Freeman* (*f*), examined unstamped copies were proved at the trial; and, on a motion, the Court held that they were properly received.

As to the

It has been noticed, that in the case of a sale of copyhold pro-

(*b*) 48 Geo. III. c. 149, s. 23.
(*c*) 16 East, 208.
(*d*) 4 B. & Ad. 617.
(*e*) 3 M. G. & S. (Com. Bench Rep.) 215.
(*f*) 14 L. J. R. (N S.) Exch. 142; 1 Car. & K. 386.

principal instrument in case of bankruptcy.

perty, in bankruptcy, the bargain and sale by the Commissioners is, under the 55 Geo. III. c. 184, to be deemed the principal instrument; but this is upon the assumption that a surrender is not necessary; and the effect of the clause is rendered somewhat doubtful, by the subsequent provision in the Bankrupt Act, 6 Geo. IV. c. 16, s. 68, under which a surrender is considered requisite; it is certain, however, that in reference to the latter Act, the necessity for a deed still existed, and as such deed would, no doubt, in all cases, (although not expressly required, and therefore not, necessarily, so,) be a bargain and sale, it would be the instrument, by name, pointed out to bear the *ad valorem* duty, and, therefore, although a surrender would be also required, it is questionable whether the bargain and sale should not be impressed with the *ad valorem* duty; the case seems, peculiarly, one for the exercise of the right of election, given in cases of doubt as to which is the principal instrument.

Authority to surrender in the conveyance from the commissioners in bankruptcy not liable to separate stamp.

It has been questioned whether the authority contained in the deed, to surrender to the purchaser, is not chargeable with the additional duty of 30*s.* specifically imposed on a letter of attorney. It may not, perhaps, admit of a doubt, that the appointment by the Commissioners of a person to act "on their behalf," in this respect, comes within the description of instrument charged with the latter duty; but it would scarcely seem to involve the payment of the duty; the deed and the surrender are both matters of conveyance, and the appointment is, certainly, incident to the sale and conveyance of the property; the whole appear to be contemplated by the statute as essential, if not made so by it (*f*).

Covenant to surrender copyholds in a conveyance of freehold lands.

Somewhat analogous to this latter point, is the case of covenants to surrender, and for the title to copyhold lands, contained in a deed of conveyance of freehold or leasehold property, where both are sold by one contract. There seems, however, less room for supposing that the ordinary deed stamp is requisite in this instance, in addition to the *ad valorem* duty in respect of the property conveyed; it cannot be questioned that the covenants are incident to the sale and conveyance of the property sold, although they may be collateral to the conveyance of the freehold or leasehold portion of it, and that they do not, therefore, render necessary any such additional stamp. The same may be said of the covenants in a mortgage deed, in a case where copyhold and other property is agreed to be mortgaged, for securing the same sum of money.

(*f*) All the above remarks, relating to matters in bankruptcy, apply, also, to the recent Act, 12 & 13 Vict. c. 106.

A warrant or authority to the steward, to vacate a conditional surrender, has been the subject of question as to the stamp duty thereon; it would seem, however, to be liable as a letter or power of attorney.

Warrant to vacate surrender.

Many cases will be found reported as to the right of the lord or steward to require payment of several fines or fees on the surrender of, or admission to several tenements, or several estates therein (*g*); but these decisions determine nothing respecting the liability to several stamp duties; they cannot be said to evolve any principle by which such liability can be influenced; and they, therefore, go no way towards deciding the frequently repeated question, whether several stamp duties are requisite in such cases. The only opinion that can be given, by way of answer to any general inquiry of this kind, is, that if, in point of fact, a copy of Court roll express more than one surrender, or admission, several stamp duties will be payable; but that whatever number of tenements, or estates, be contained, or referred to in the copy, if they be described as the subject of only one surrender, or one admittance, no more than one stamp duty will be necessary for such surrender, or such admittance. This, however, must be understood with the qualification in reference to the general question alluded to in the next case.

As to the liability to several stamp duties on the surrender, &c., of several estates.

A point of some importance arose in the case of *The Queen* v. *Eton College* (*h*). Five several tenants in common of copyhold property contracted to sell the entirety to a purchaser, for 1022*l.*, and they joined in one surrender out of Court. At a Court, subsequently held, the purchaser attended to be admitted; but the steward refused to admit him, except on payment of five separate fines, fees, and stamp duties respectively. The Court, on showing cause against a rule for a *mandamus*, held that several stamps were necessary. Lord *Denman* is reported to have said, "This is a clear case. The distinction suggested as to this being a separate estate as between the parties, but not as to others, is without any authority; and, as the interest of each is not vested in the surrenderee until after surrender and admittance, there must be a separate stamp for each." Mr. Justice *Coleridge* observed, "The admittance here will enure according to the estate, and as there are

(*g*) *Attree* v. *Scutt*, 6 East, 476; 2 Smith, 449; *Rex* v. *Bonsall*, 3 B. & C. 123; 4 D. & R. 825; *Grant* v. *Astle*, 2 Doug. 722; *Garland* v. *Jekyll*, 2 Bing 273; 9 Moore, 502; *Holloway* v. *Berkeley*, 6 B. & C. 2; 9 D. & R. 83; *Everest* v. *Glyn*, Holt, 1; 2 Marsh. 84; 6 Taunt. 425; *Searle* v. *Marsh*, 1 Marsh. 86, n.

(*h*) 6 Law Times, 369; 8 A. & E. (N. S.) 526; 16 L J. R. (N. S.) Q. B. 18, *nom. Reg.* v. *Everdon*.

several estates, therefore, without several admissions, the surrender will not be complete. Several stamps are, therefore, necessary."

The surrender, of course, suggested no difficulty, that instrument being subject to *ad valorem* duty; which, in such cases, is, expressly, charged on the aggregate purchase-money.

The question involved in this case is one of a general nature; although it may, probably, arise more frequently on the transmission of copyhold property than any other. It cannot be disputed that if there be five separate and independent surrenders, whether on the same piece, or on separate pieces of parchment, there must be as many stamp duties; but, if there be, in point of form, only one admission, it is to be seen whether one stamp duty is sufficient. This question is the same, and must be governed by the same principle, whether the conveyance be of copyhold, or of other property; the reader, is, therefore, referred to the general head of "INSTRUMENTS," for the discussion on the point. If, however, there be anything in the remark, that tenants in common cannot be *jointly*, but must of necessity, be *severally* admitted, or that a purchaser must be admitted separately, as on a surrender by each tenant in common; then the question is, so far, peculiar to copyhold property, and all argument respecting it may, perhaps, be said to be precluded; as, in that case, it would seem to be clear that several stamp duties are payable.

Deeds. See "INSTRUMENTS."

Denoting Stamp.

SOME misapprehension is known to prevail as to the use and application of the stamp which is, popularly, and, at the same time, expressively, termed, the "Denoting Stamp;" it is frequently applied for in cases where there is no authority for it (*a*), and where, in some instances, not only is there no need of it, but the use of it would involve an inconsistency.

It is to be observed, as a general rule, that the denoting stamp is never to be impressed on any instrument, whatever, that is not, itself, *primâ facie*, liable to *ad valorem* duty; that is to say, that does not come within the description of instruments, primarily, charged with such duty; the object of the stamp being, to denote that the *ad valorem* duty, which is so charged on that particular instrument, has been paid upon some other instrument, also, liable to the same duty, in respect of the same subject-matter. The use of this peculiar stamp is authorized in reference to four different heads of charge: *viz.*, Articles of Clerkship, Probate or Administration, Conveyance upon Sale, and Mortgage.

Articles of clerkship.

I. ARTICLES OF CLERKSHIP (*b*).—By the 34 Geo. III. c. 14, s. 11, it is enacted, that where any contract, whereby a person shall be bound to serve any attorney, &c., shall be made by indentures of different parts, or there shall be duplicates, it shall be sufficient to stamp one part, or one such indenture, only, with the stamp required to denote the duty, before the instrument is written; and that the Commissioners of Stamps may provide a distinguishable stamp for the other part, or duplicate.—See "ARTICLES OF CLERKSHIP."

Probate or administration.

II. PROBATE OR ADMINISTRATION.—By the 41 Geo. III. c. 86, s. 5, provision is made for stamping any probate, or letters of administration, with a denoting stamp, in cases where the full duty has been paid on any former instrument of the same kind, in respect of the same estate.—See "PROBATE AND ADMINISTRATION."

Conveyance.

III. CONVEYANCE *upon Sale*.—The instrument charged

(*a*) See *Wood* v. *Norton*, page 249, *post*.

(*b*) In the case of articles of clerkship the duty, the payment of which is denoted, cannot properly be termed *ad valorem* duty.

with this *ad valorem* duty is, "*the principal, or only deed, instrument, or writing*, whereby the lands, or other things sold, shall be granted, &c.;" and the notes to be found under this head in the TABLE (*c*), contain directions as to what particular instruments shall, in certain cases, be deemed the principal ones, and liable, accordingly, to the *ad valorem* duty. In some instances, *viz.*, where lands are conveyed by bargain and sale enrolled, and, also, by lease and release, or feoffment; or, where by lease and release, and, also, by feoffment, it is, in positive terms, declared, that the deeds not chargeable with the *ad valorem* duty shall not be enrolled, or available, unless stamped with the denoting stamp. On the transfer of copyhold or customary estates, and of property, by certain means specified, in Scotland, it is, likewise, declared, what shall be deemed the principal instrument; without, however, otherwise than by a general provision, authorizing the impressing of the denoting stamp on any of the other instruments, also, made use of on these occasions.

Several instruments, specified

Several instruments, not specified.

The general provision alluded to is as follows, *viz.*, "Where, *in any case, not expressly provided for*, of several deeds, instruments, or writings, *a doubt shall arise* which is the principal, the parties may determine for themselves, and pay the *ad valorem* duty accordingly; and, if necessary, the other deeds, instruments, or writings, *on which the doubt shall have arisen*, shall be stamped with a particular stamp, for denoting or testifying the payment of the *ad valorem* duty; upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects."

Duplicates.

It is also further provided that where there are duplicates of any deed, or instrument, chargeable with the said *ad valorem* duty, exceeding 2*l.*, one of them, only, shall be charged therewith, and the other, or others, shall be charged with the ordinary duty on deeds or instruments of the same kind, not upon a sale; and, on the whole being produced, duly stamped as thereby required, the latter shall, also, be stamped with a particular stamp, for denoting, or testifying the payment of the said *ad valorem* duty.

Thus three cases are to be found, under the head Conveyance, in which provision for the denoting stamp is made, *viz.*:—

1st. Where several instruments specified, are employed in conveying the property.

2ndly. Where several instruments, not specified, are made use of, each of them being, in reference to its contents, within the

(*c*) See also *ante*, page 216.

charge of the *ad valorem* duty, but it is doubtful which is the principal.

3rdly. Where there are duplicates.

IV. MORTGAGES.—Under this head, provision is made for the denoting stamp in four instances, *viz.*: Mortgage.

1st. Where several instruments, falling within the description of those charged with *ad valorem* duty on mortgages, are made *at the same time*, for securing the same sum: in which case the *ad valorem* duty, if exceeding 2*l.*, is to be impressed only on one; the rest are to be charged with the duty to which they may be liable under any more general description in the schedule; and, if required for the sake of evidence, they are to be, also, stamped with a denoting stamp, on the whole being produced, duty stamped with the duties charged thereon. Several instruments.

2ndly. Where there are duplicates; in which cases it is provided, that the *ad valorem* duty, if exceeding 2*l.*, shall be payable on one of them, only; the other, or others to be charged with the duty to which the same may be liable, under any more general description in the schedule; and that on the whole being produced, duly stamped as required, the latter shall be impressed with a denoting stamp. Duplicates.

3rdly. Where an instrument is made for the further assurance of property, already mortgaged by any instrument which shall have paid the *ad valorem* duty charged on mortgages by the present, or any former Act; or, where it is made as an additional, or further security for any sum already secured by any instrument which shall have paid the said duty; which subsequent instruments are exempted from the said *ad valorem* [but not from any other (*d*)] duty. In these cases it is provided, that, if necessary, for the sake of evidence, the instruments, so exempted, shall be impressed with a denoting stamp, upon all the instruments, relating to the particular transaction, being produced, and appearing to be duly stamped with the duties to which they are liable. Instruments of further assurance, or further security.

4thly. The last-mentioned exemption is, by the 3 Geo. IV. c. 117, s. 3, extended to any instrument made as an additional or further security for any sum already, or previously secured by any bond, on which the *ad valorem* duty on bonds charged by any of the said Acts, shall have been paid; and a similar provision is made for impressing the denoting stamp. Further security where payment already secured by bond.

(*d*) *Doe* v. *Gray*, 3 A. & E. 84.

Denoting stamp not compulsory, in any case.

IT is scarcely necessary to remark, that the use of the denoting stamp, in lieu of the *ad valorem* duty, the payment of which it is intended to testify, is not compulsory, in any case; for, although, in the instance of a conveyance upon the sale of property, the *ad valorem* duty is charged for and in respect of *the principal, or only instrument*, it would be absurd to say, that where there are several instruments, each of them being a conveyance of the property sold, or purporting so to be, and, therefore, according to its terms, chargeable with the *ad valorem* duty, the parties could not treat them all as principal instruments, stamping them with the *ad valorem* duty. Any question as to the propriety of such a course, could only arise in those cases where the *ad valorem* was less than the common deed duty, and where the Stamp Act has declared which instrument shall be deemed the principal one; and it is impossible to suppose that, in any such case, the legislature intended that a higher rate of duty should be paid, if two or more instruments were used, than would have been payable if one, only, were employed. For example, in a case where both a bargain and sale enrolled, and also a lease and release are executed, the Act has declared that the release shall be deemed the principal deed, and that the bargain and sale shall not be enrolled, or be available, unless stamped with a denoting stamp, in addition to the common deed stamp; now, supposing the purchase-money to be less than 50*l.* requiring the payment of an *ad valorem* duty of 20*s.* only, or a less amount, it could not, with propriety, be contended, that the bargain and sale would not be available, if stamped with the *ad valorem* duty, merely because it was less in amount than the value of the common deed stamp, any more than if it was greater It might be said that, by a literal interpretation of the Act, such would be the case; and so it might, with equal propriety, be insisted, that if the *ad valorem* duty, so impressed on the bargain and sale, exceeded the common deed duty, nevertheless, such instrument must, within the literal terms of the Act, be stamped with the denoting stamp, in order to testify the payment of the *ad valorem* duty on the release. The sole object of the provision was, to secure the payment, on some deed or other, of the *ad valorem* duty. The production of one instrument, on which the *ad valorem* duty has been

paid, does not leave it open to inquiry, whether or not any other has been executed, bearing the same or any other duty.

It is, as it has been, elsewhere, observed (*e*), a general principle, that an instrument is liable to stamp duty according to its contents; and the recitals in it may be referred to, as controlling the question of duty (*f*); if, therefore, such contents point out the instrument as one free from the *ad valorem* duty, it is not essential that the denoting stamp should be impressed, although in a case where provision is made for it; and, in this respect, the language of the Acts is consistently varied, according to the circumstances; thus, in those cases where the facts in the second deed, are expected to be, or may be, recited, showing the existence of another instrument, bearing the *ad valorem* duty, and that such deed is, therefore, not liable to that duty, it is provided that, "if necessary," or, "if required, for the sake of evidence," the denoting stamp shall be used; but where there are duplicates of deeds, each appearing, necessarily, upon the face of it, to be a principal deed, the words, "if required," or "if necessary," are omitted.

In *Wood* v. *Norton* (*g*), where a bond accompanying a mortgage, but not bearing the same date, was rejected, because it was not stamped with the *ad valorem* duty, Lord *Tenterden* said, "All the deeds must be taken to the Stamp Office, and must have a stamp denoting that the *ad valorem* duty has been paid on all the deeds; here that has not been done." This remark was, of course, made without regard to the extent of the provision to which his Lordship alludes, and assuming that the Commissioners possessed the power of impressing the denoting stamp in every instance of a second instrument subject to *ad valorem* duty; it will be a sufficient answer to the observation, however, to say, that there is no provision for impressing it on a bond, *in any case*.

Counterpart not entitled to a denoting stamp.

The distinction between a counterpart and a duplicate, in reference to the use of the denoting stamp, must not be confounded; these are not convertible terms. No provision is made for impressing a counterpart with a denoting stamp, in any instance, except that of Articles of Clerkship, in which authority is given for the stamp, where the indentures are of different parts, or there are duplicates. In every case of a lease, subject to a duty exceeding 20*s*., a duty of 30*s*. is, expressly, charged on a counterpart, or duplicate; and, where a premium is paid, reference is made to the head "Conveyance" for the duty; whereby the instrument

(*e*) Page 9, *ante*. (*f*) See "MORTGAGE."
(*g*) Page 208, *ante*.

becomes subject to all the rules and regulations relating to conveyances upon sale; but the counterpart is not entitled to the privilege of the denoting stamp; nor, perhaps, is it at all necessary; for, a counterpart of a lease is always to be identified, as such, and needs no other stamp, to give it validity, than that, expressly, charged upon it. Whether or not the omission to make special provision, in the case of the counterpart of a conveyance on sale, was intentional, it may be difficult to determine; as it may, likewise, to surmise, if the fact were so, for what reason it was purposely omitted. Possibly, it was considered unnecessary; for, as the *ad valorem* duty is charged on the *principal or only* instrument of conveyance, and, as no doubt could ever arise that a counterpart was not such principal or only instrument, no necessity could exist for a stamp signifying the payment of a duty to which it was not, primarily, liable. And this consideration may be said to exclude the case of a conveyance and counterpart from the clause relating to that of several deeds, *not expressly provided for*, where parties are permitted to determine for themselves which is the principal.

Discount and Allowances.

Drawback.

AN ALLOWANCE has, at all times, been granted under the authority of some enactment in force at the period, on the payment of money for stamps of a certain amount, or for duties collected. All such allowances as were in existence on the passing of the general Stamp Act in 1804, (44 Geo. III. c. 98,) were, by that Act, repealed, others being granted in lieu, as set forth in the schedule (C) thereto; but, with one exception, these have also been, recently, repealed.

44 Geo. III. c. 98.

To any person, body politic, or corporate, carrying on the business of *sea insurances* within the city of *London*, who shall have given security by bond for the payment of the duties on sea-policies, at the times, and in the manner to be prescribed by the said Commissioners; and who shall duly pay the said duties in the time and manner prescribed; 1*l.* 10*s.* for every 100*l.* of the amount of the duties so paid; and so in proportion, for any greater or less sum.

Discount on sea-policies in London.

55 Geo. III. c. 184.

Sect. 36.—To the corporations or companies, and others, collecting and receiving the duties on *Insurances against loss by fire*, and accounting for and paying over the same, as required by this Act, and the 22 Geo. III. c. 48. *viz.*:

Fire Insurance. Allowance for receiving the duties.

To those having their head office in *London* or *Westminster*, 4*l. per cent.* on the duties collected and received at such head office; and 5*l. per cent.* on the duties collected by their agents out of *London* and *Westminster*.

In London.

To those not having their head office in *London* or *Westminster*, 5*l. per cent.* on the duties collected by them.

In the country.

Provided they deliver their quarterly accounts, containing all the requisite particulars, and make payment of the said duties, within the time prescribed by this and the said Act.

9 Geo. IV. c. 27.

By this Act the allowances on receipt stamps granted by the 44 Geo. III. c. 98, were repealed, and a discount of 7*l.* 10*s. per cent.* was granted in lieu. Repealed by 12 & 13 Vict. c. 80; see "RECEIPTS," *post*, as to the direction to issue stamps for receipts without making any charge for the paper; and as to venders not being permitted to make any such charge.

3 & 4 Vict. c. 96.

Sect. 21.—No discount to be allowed on postage stamps, unless directed by the Treasury.

Discount on postage stamps.

12 & 13 Vict. c. 80.

Repealing the allowances granted by the 44 Geo. III. c. 98, (extended to Ireland by the 5 & 6 Vict. c. 82,) on the purchase of stamps, in general; and on medicine labels; and for receiving the duties on gold and silver plate; and granting the following, in lieu:

Deed, and other stamps.

To any person who, at one and the same time, shall produce at the office of the Commissioners of Inland Revenue in London, or Dublin, to be stamped; or shall purchase of the Commissioners at their office in London, Edinburgh, or Dublin, vellum, parchment, or paper stamped with stamps (not being labels for medicines) under the value, respectively, of 10*l.* each, but to the amount or value, in the whole, of 30*l.* or upwards; 1*l.* 10*s.* for every 100*l.*, and so, in proportion, for any greater or less sum not under 30*l.*

Medicine labels.

To any person who shall, at one and the same time, purchase of the Commissioners at their office in London, or Edinburgh, stamped labels for medicines, the duty whereon shall amount to 50*l.* or upwards; 5*l.* for every 100*l.*, and so, in proportion, for any greater or less sum not under 50*l.*

Gold and silver plate.

Allowance for receiving duties.

For receiving the duty for and in respect of gold plate, or silver plate, made or wrought in Great Britain or Ireland, paying the same, and making out the accounts according to the directions of the several Acts of Parliament in that behalf made; 1*l.* for every 100*l.* so received, paid, and accounted for, and so, in proportion, for any greater or less sum.

DRAWBACK ON PLATE.

44 Geo. III. c. 98.

Plate exported by way of merchandise.

Schedule (*C*).—For or in respect of gold or silver plate, wrought or manufactured in Great Britain, exported by way of merchandise to Ireland, or any foreign parts;—the whole duties which shall have been paid for the same.

52 Geo. III. c. 59.

Whether as merchandise or not, if new.

The drawback to be allowed whether the plate is intended as merchandise or not, provided it be proved to the satisfaction of the Commissioners of Customs that it is new, and has never been used.

1 Geo. IV. c. 14.

No drawback on gold rings, nor on any article unless exceeding two oz.

Sect. 1.—No drawback to be allowed on gold rings.
Sect. 2.—Nor on any articles of gold, unless the weight exceed 2 ounces.

3 & 4 Will. IV. c. 97.

Ireland.

Sect. 21.—The drawback on plate (new and not used) exported from Ireland to foreign parts to be allowed as in Great Britain. See also "PLATE."

Ireland.

By the 5 & 6 Vict. c. 82, assimilating the stamp duties in Ireland to those in England, it is provided (sect. 7), that the discounts, allowances, and drawback authorized in England shall be extended to Ireland.

Forgery. Fraud.

UNDER this head will be comprised such offences, only, as are punishable criminally.

1 Anne, stat. 2, c. 22.

By this Act the offence of fraudulently altering a stamped writing, so as to make use of the stamp for another instrument; or getting off the stamp for the like purpose, was punishable by a pecuniary penalty only.

Penalty for altering a writing, &c., so as to use the stamp again.

12 Geo. III. c. 48.

If any person or persons shall write, or engross, or cause to be written or engrossed, either the whole, or any part of any writ, mandate, bond, affidavit, or other matter or thing whatsoever, in respect whereof any duty is, or shall be payable, by any Act or Acts made, or to be made in that behalf, on the whole or any part of any piece of vellum, parchment, or paper, whereon there shall have been before written any other writ, bond, mandate, affidavit, or other matter, or thing, in respect whereof any duty was, or shall be payable, as aforesaid, before such vellum, parchment, or paper, shall have been again marked, or stamped, according to the said Acts; or shall, fraudulently, erase or scrape out, or cause to be erased, or scraped out, the name or names of any person or persons, or any sum, date, or other thing, written in such writ, mandate, affidavit, bond, or other writing, matter, or thing as aforesaid; or, fraudulently, cut, tear, or get off, any mark or stamp, in respect whereof, or whereby any duties are, or shall be payable, or denoted to be paid, or payable, as aforesaid, from any piece of vellum, parchment, or paper, playing cards, outside paper of any parcel or pack of playing cards, or any part thereof, with intent to use such mark or stamp for any other writing, matter, or thing, in respect whereof any such duty is or shall be payable, or denoted to be paid or payable, as aforesaid; then so often, and in every such case, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person to commit any such offence, or offences, shall be deemed and construed guilty of felony; and be transported for a term not exceeding seven years. And if he escape, break prison, or return from transportation, he shall suffer death, as a felon, without benefit of clergy.

The same offences, felony.

Sect. 2.—If any person commit any of the offences aforesaid, and, being out of prison, discover one or more persons who shall since have committed any such offence, so as such person or persons be convicted, he shall be entitled to a pardon.

46 Geo. III. c. 76.

Sect. 9.—If any person knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging or counterfeiting the name, or handwriting of the Receiver-General of the Stamp Duties for the time being, or of his clerk, or of either of the Commissioners of Stamps, to any draft, instrument, or writing whatsoever, for, or in order to the receiving or obtaining any of the money in

Forging the Receiver-General's draft.

the hands or custody of the Governor and Company of the Bank of England, on account of the Receiver-General of the Stamp Duties; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or, knowingly and wilfully, act and assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft, made by such Receiver-General, or his clerk; or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever; every such person, so offending, shall be guilty of felony, and shall suffer death as a felon, without benefit of clergy.

52 Geo. III. c. 143.

For amending and reducing into one Act the provisions contained in any laws now in force imposing the penalty of death for any act done in breach of or in resistance to any part of the laws for collecting His Majesty's revenue in Great Britain.

Forging any die;

Sect. 7.—If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, die, or plate, which in pursuance of any Act or Acts of Parliament shall have been provided, made, or used by or under the direction of the Commissioners appointed to manage the duties on stamped vellum, parchment, and paper, or by or under the direction of any other person or persons legally authorized in that behalf, for expressing or denoting any duty or duties, or any part thereof, which shall be under the care and management of the said Commissioners, or for denoting or testifying the payment of any such duty or duties, or any part thereof, or for denoting any device appointed by the said Commissioners for the ace of spades, to be used with any playing cards; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, the impression, or any resemblance of the impression, of any such mark, stamp, die, or plate as aforesaid, upon any vellum, parchment, paper, card, ivory, gold or silver plate, or other material; or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, paper, card, ivory, gold or silver plate, or other material, with any such forged or counterfeited mark, stamp, die, or plate as aforesaid, with intent to defraud his Majesty, his heirs or successors, of any of the duties, or any part of the duties, under the care and management of the said Commissioners; or if any person shall utter or sell, or expose to sale, any vellum, parchment, paper, card, ivory, gold or silver plate, or other material having thereupon the impression of any such forged or counterfeited mark, stamp, die, or plate, or any such forged or counterfeited impression as aforesaid, knowing the same respectively to be forged or counterfeited; or if any person shall privately or secretly use any such mark, stamp, die, or plate which shall have been so provided, made, or used by or under such direction as aforesaid, with intent to defraud his Majesty, his heirs or successors, of any of the duties or any part of the duties under the care and management of the said Commissioners; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

or the impression of a die;

stamping with a forged die;

uttering a forged stamp;

privately using a genuine die.

Plate.

Transposing marks;

Sect. 8.—If any person shall transpose or remove, or cause or procure to be transposed or removed, from one piece of wrought plate of gold or silver to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, provided, made, or used by or under the direction of the said Commissioners of Stamps, or by or under the direction of any other person or persons legally authorized in that behalf, for denoting any duty or duties, or the payment of any duty or duties, granted to his Majesty on gold or silver plate; or shall stamp or mark, or cause or procure to be stamped or

stamping base

marked, any vessel or ware or base metal with any mark, stamp, or die which shall have been forged or counterfeited in imitation of or to resemble any mark, stamp, or die, so provided, made, or used as aforesaid; or shall sell, exchange, or expose to sale, or export out of Great Britain, any wrought plate of gold or silver, or any vessel or ware of base metal, having thereupon the impression of any forged or counterfeited mark, stamp, or die for denoting any such duty or duties, or the payment of any such duty or duties, or any forged or counterfeited impression of any mark, stamp, or die so provided, made, or used as aforesaid, or any impression of any such mark, stamp, or die which shall have been transposed or removed from any other piece of plate as aforesaid, knowing the same respectively to be forged or counterfeited, or transposed or removed as aforesaid; or shall wilfully and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited mark, stamp, or die for denoting any such duty or duties, or the payment thereof; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

metal with a forged die; selling wares with forged or transposed marks; having possession of a forged die.

53 Geo. III. c. 108.

Sect. 25.—All criminal offences against, or in breach of any Act or Acts of Parliament, now in force, for granting or securing any of the duties under the management of the Commissioners of Stamps, shall and may be inquired of, tried, and determined, either in the county, or city, or town and county where the offence shall be committed, or where the party or parties accused, or any of them, shall be apprehended.

Where offences may be tried.

55 Geo. III. c. 184.

Repealing Stamp Duties in Great Britain and granting others in lieu.

Sect. 7.—If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die, or any part of any stamp or die, which shall have been provided, made, or used in pursuance of this Act, or in pursuance of any former Act or Acts relating to any stamp duty or duties; or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression or any part of the impression of any such stamp or die as aforesaid upon any vellum, parchment, or paper; or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper with any such forged or counterfeited stamp or die, or part of any stamp or die as aforesaid, with intent to defraud his Majesty, his heirs or successors, of any of the duties hereby granted, or any part thereof; or if any person shall utter or sell or expose to sale any vellum, parchment, or paper having thereupon the impression of any such forged or counterfeited stamp or die, or part of any stamp or die, or any such forged, counterfeited, or resembled impression or part of impression as aforesaid, knowing the same respectively to be forged, counterfeited, or resembled; or if any person shall privately and secretly use any stamp or die which shall have been so provided, made, or used, as aforesaid, with intent to defraud his Majesty, his heirs or successors, of any of the said duties or any part thereof; or if any person shall fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which shall have been provided, made, or used in pursuance of this or any former Act for expressing or denoting any duty or duties under the care and management of the Commissioners of Stamps, or any part of such duty or duties, from any vellum, parchment, or paper

Forging a die. Forging the impression of a die. Stamping with forged die. Uttering forged stamp. Privately using genuine die. Getting off stamps to use again.

whatsoever, with intent to use the same for or upon any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the duties hereby granted, then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon without benefit of clergy.

55 Geo. III. c. 185.

Repealing certain Stamp Duties in Great Britain and granting others.

Plate.

Forging a die; or the impression of a die.

Using a forged die.

Transposing stamps.

Selling plate, &c., with forged or transposed marks.

Having possession of a forged die, or secretly using a genuine die.

Felony.

Sect. 7.—If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, or die, which shall have been provided, made, or used in pursuance of this or any former Act, relating to any duties on gold or silver plate made or wrought in Great Britain, for the purpose of marking or stamping any such gold or silver plate, in the manner directed by any such Act; or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression of any such mark, stamp, or die, upon any such gold or silver plate, with intent to defraud his Majesty, his heirs or successors; or if any person shall mark or stamp, or cause or procure to be marked or stamped, any such gold or silver plate, or any vessel or ware of base metal, with any such forged or counterfeited mark, stamp, or die as aforesaid; or shall transpose or remove, or cause or procure to be transposed or removed, from one piece of gold or silver plate to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, which shall have been provided, made, or used in pursuance of this or any former Act, for the purpose of marking or stamping of any such gold or silver plate as aforesaid; or if any person shall sell, exchange, or expose to sale, or export out of Great Britain, any such gold or silver plate, or any vessel or ware of base metal, having thereupon the impression of any such forged or counterfeited mark, stamp or die, as aforesaid, or any forged, counterfeited, or resembled impression of any mark, stamp, or die, so provided, made, or used as aforesaid, or any impression of any such mark, stamp, or die, which shall have been transposed or removed from any other piece of plate as aforesaid, knowing the same respectively to be forged or counterfeited, or transposed or removed as aforesaid; or if any person shall wilfully and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited mark, stamp, or die, as aforesaid, or shall privately and secretly use any mark, stamp, or die, so provided, made, or used as aforesaid, with intent to defraud his Majesty, his heirs, or successors; then every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

See 6 & 7 Vict. c. 22, *post*.

5 Geo. IV. c. 41.

Proceedings for taking stamps, &c., to be in the name of the king, &c., and

Sect. 3.—All proceedings for taking or detaining, or for losing, damaging, or destroying any vellum, parchment, or paper, upon which any stamp, denoting any duties, has been impressed or put; or for any other cause relating to the same, shall and may be commenced, instituted, and proceeded in, in the name of his Majesty, his heirs and successors, or the name of the Attorney

or Solicitor-general in England or Ireland, or of the Advocate or Solicitor-General in Scotland, respectively, for the time being, for and on behalf of his Majesty, his heirs and successors; and in all such proceedings the property in such vellum, parchment, or paper, so stamped, shall be described, and be deemed to be in his Majesty, his heirs and successors; and the value shall be deemed to be the amount of the value of the vellum, &c., and of the stamp duty denoted thereon; and in every prosecution for embezzling or stealing such vellum, &c., or for any offence relating to the same, it shall be sufficient to state and describe the property in the same to be in his Majesty, his heirs and successors; which property shall be deemed and taken to be vested in his Majesty, his heirs and successors, accordingly.

property to be laid to be his Majesty's.

9 Geo. IV. c. 18.

To repeal the Stamp Duties on cards and dice made in the United Kingdom, and to grant other duties in lieu thereof; and to amend and consolidate the Acts relating to such cards and dice, and the exportation thereof.

Cards and Dice.

Sect. 35.—If any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, any type, die, seal, stamp, mark, plate, or device, or any part of any type, die, seal, stamp, mark, plate, or device, which shall be at any time provided, made, or used by or under the authority of the Commissioners of Stamps in pursuance of this Act; or shall counterfeit, or shall cause or procure to be counterfeited or resembled, the impression of any such type, die, seal, stamp, mark, plate, or device, or any part thereof, upon any playing card or dice, or upon any label, thread, or paper; or shall forge or counterfeit the name, handwriting, or signature of any sealing officer, or other officer of stamps, to or upon any wrapper, paper, or material in which any dice shall be actually enclosed; or shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, any mark or name, or any part of any mark or name, directed to be used by the Commissioners of Stamps in pursuance of this Act, in order to distinguish the maker of any such cards or dice respectively, and printed or marked on or affixed to or making part of the wrapper, label, or paper in which any playing cards or dice shall be actually enclosed, with intent to defraud his Majesty, his heirs or successors, of any of the duties at any time by law payable upon cards or dice; or shall utter, or sell or expose to sale, or part with for use in play, any card, die, ace of spades, label, wrapper, or Jew whatsoever, with such counterfeit seal, stamp, mark, device, impression, name, or signature, knowing the same to be counterfeit; or shall privately or fraudulently use any seal, stamp, mark, plate, device, or label at any time provided, made, or used by or under the authority of the Commissioners of Stamps in pursuance of this Act, with intent to defraud his Majesty, his heirs and successors, of any of the duties at any time by law payable upon cards or dice; every person convicted of any such offence in due form of law shall be adjudged a felon, and shall suffer death.

Forging type, die, &c.; or the impression of any type, die, &c.; or the name of officer; or the mark or name of the maker on the wrapper, &c.

Uttering cards, &c., with forged seal, &c.

Fraudulently using any genuine seal, &c.

1 Will. IV. c. 66.

Sect. 1.—Where, by any Act now in force, any person falsely making, forging, counterfeiting, erasing, or altering any matter whatsoever; or uttering, publishing, offering, disposing of, putting away, or making use of any matter whatsoever, knowing the same to be falsely made, &c., would be guilty of felony, and liable to suffer death, as a felon; in every such case, if any person shall be convicted of any such felony, or of aiding, &c., he shall not

The capital punishment repealed in certain cases of forgery.

suffer death, but be transported for life, or any term not less than seven years, or be imprisoned for any term not exceeding four nor less than two years.

Where offenders may be indicted.

Sect. 24.—The offenders may be indicted, and the offences charged in the county or place where such offender is apprehended.

3 & 4 Will. IV. c. 97.

To prevent the selling and uttering of forged stamps.

Selling stamps without licence, where forged.

Sect. 3.—In prosecutions for selling stamps without licence, if any of such stamps be proved to be forged, the penalties to be double, (40*l.*); the party not to be exempt from the consequences of knowingly selling the same.

Commissioners may grant warrants to inspect the stamps of distributors and licensed dealers.

Power of entry.

Constables refusing to aid, &c.

Sect. 9.—Upon information given to the Commissioners of Stamps upon oath, (which any one of them, or any Justice may administer,) that there is reasonable cause to suspect that any distributor of stamps, or any sub-distributor appointed by him, or person licensed, or who shall have been licensed under this Act, hath in his possession any forged or counterfeit stamp or stamps, the said commissioners, or any three of them, may by warrant under their hands, authorize any officer of Stamp Duties, and such officer may accordingly, with the assistance, if required, of any constable, enter, between the hours of nine in the morning and seven in the evening, into the dwelling-house, room, shop, warehouse, outhouse, or other building of or belonging to any distributor or sub-distributor, or person licensed, or who, at any time within six calendar months then last past, shall have been licensed to vend or deal in stamps; and if, on demand of admittance and notice of such warrant, the door of any such dwelling-house, &c., or any inner door thereof, shall not be opened, may break open the same, and search for and seize, and take into his and their possession, all such stamped vellum, parchment, or paper as shall be in any such place, or elsewhere in the custody or possession of such distributor or sub-distributor, or other person; and all constables are required, to aid and assist therein; and if any constable refuse or neglect to be so aiding and assisting, or if any person refuse to permit any such search or seizure to be made, or assault, oppose, molest, or obstruct any person employed or acting in the execution or under the authority of any such warrant, or aiding or assisting in the execution thereof, he shall forfeit fifty pounds. This penalty may be recovered for the Crown in any of the superior courts in Great Britain, or before a Justice of the peace. See "PENALTIES."

Acknowledgment to be given for stamps seized.

Licensed vendor entitled to be paid the amount of genuine stamps seized, or to have them returned to him.

Sect. 10.—Provided that any person who shall execute any such warrant shall, if required, give to the person in whose possession any stamps shall be found and seized an acknowledgment of the number, particulars, and amount of the stamps so seized, and shall permit the same to be marked before the removal thereof; and if the person in whose possession any stamps shall be so found shall be or shall have been within the time aforesaid a licensed vendor, he shall be entitled to claim and receive in money from the commissioners the amount of such as shall be found to be genuine, (deducting the percentage allowed on the purchase of stamps,) and of the vellum, parchment, or paper whereon the same shall be impressed; or, if the said commissioners shall think fit, such of the said stamps as shall be genuine shall be returned, with such reasonable amends as the lord commissioners of His Majesty's treasury may think fit to award.

Licensed vendors having counterfeit stamps in their possession liable to the penalties of

Sect. 11.—Whenever any vellum, parchment, or paper shall be found in the possession of any person licensed to vend or deal in stamps, or who shall have been so licensed at any time within six calendar months then next preceding, having thereon any counterfeit stamp, such person shall be deemed and taken to have so had the same in his possession with intent to vend, use, or utter the same with such counterfeit stamp, thereon, unless the contrary shall be satisfactorily proved; and shall also be deemed and taken to have

such vellum, parchment, or paper so in his possession, knowing the stamp thereon to be counterfeit, and shall be liable to all penalties and punishments by law imposed or inflicted upon persons vending, or having in possession counterfeit stamps, knowing the same to be counterfeit, unless he shall satisfactorily prove that such stamp or stamps was or were procured by or for him from some distributor of stamps, or person licensed to deal in stamps.

vending forged stamps.

Sect. 12.—If any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument which at any time whatever hath been or shall or may be provided, made, or used, by or under the direction of the Commissioners of Stamps, for the purpose of expressing or denoting any Stamp Duty whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for the stamp, mark, or impression of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit; or if any person shall fraudulently use, join, fix, or place for, with, or upon any vellum, parchment, or paper any stamp, mark, or impression which shall have been cut, torn, or gotten off or removed from any other vellum, parchment, or paper; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment, or paper any name, sum, date or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any Stamp Duty is or shall or may be or become payable; or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper from or off or out of which any such name, sum, date, or other matter or thing as aforesaid shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid, then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, nor less than two years

Having in possession any forged die; or any vellum with the impression of a forged die, or having thereon any forged stamp; or fraudulently affixing stamps; or erasing names, dates, &c; with intent to use the stamps again, or knowingly using any stamped vellum, &c. from which any name, date, &c. shall have been fraudulently erased.

Felony.

Sect. 13.—On information given before any Justice, upon oath, that there is just cause to suspect any person of being or having been in any way engaged or concerned in making any false or counterfeit die, plate, or other instrument, or unlawfully marking or impressing any stamp, mark, or impression on any vellum, parchment, or paper with any such die, plate, or instrument, or in the unlawful possession of any forged or counterfeit die, plate, or instrument, or of any vellum, parchment, or paper with any counterfeit stamp, mark, or impression thereon: or in unlawfully or fraudulently, or without due authority, marking or impressing any lawful stamp on any vellum, parchment, or paper, or in causing or procuring the same to be so marked or impressed, or in aiding, abetting, or assisting in so marking or impressing the same; or in the unlawful possession of any vellum, parchment, or paper, or other material, unlawfully or fraudulently or without due authority stamped or marked,

Houses of persons suspected of being concerned in the forging of dies or stamps, or in the commission of other felonious acts, may be searched.

contrary to any of the provisions or regulations contained in any Act relating to Stamp Duties; or of being or having been in any way engaged or concerned in the fraudulent erasing, cutting, scraping, discharging, or getting out of or from or off any stamped vellum, parchment, or paper any matter or thing thereon written, printed, or expressed; or in the unlawful possession of any stamped vellum, parchment, or paper from or off or out of which any matter or thing shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid, such Justice may, by warrant under his hand, cause any and every dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person, or where any such person shall be suspected of being or of having been in any way engaged or concerned in the commission of any such offence as aforesaid, or of secreting any such die, plate, or instrument, or any such vellum, parchment, or paper, or any of the machinery, implements, or utensils necessary or applicable to the commission of any such offence as aforesaid, to be searched for any such stamped vellum, parchment, or paper, and for any such die, plate, or instrument, machinery, implement, or utensil, or other matter or thing as aforesaid; and if any of the said several matters and things shall be found in any place so searched, or in the custody or possession of any person whatsoever not having the same by some lawful authority, the person finding any such matters or things may seize the same respectively, and carry the same forthwith to the Justice by whom such warrant shall be granted, or to any other Justice having jurisdiction where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall or may be prosecuted in any Court of Justice for any of the offences aforesaid; and afterwards the said matters and things so seized, whether produced in evidence or not, shall, by order of the Court or Judge before whom such offender shall be tried, or by order of some Justice of the Peace in case there shall be no such trial, be delivered over to the Commissioners of Stamps, to be defaced or destroyed, or otherwise disposed of, as the said Commissioners shall think fit.

Justices may issue warrants for seizing stamps suspected to be stolen or fraudulently obtained.

Sect. 15.—And for the better preventing and detecting of felonies and frauds, any Justice having jurisdiction where any stamped vellum, parchment, or paper shall be or be supposed to be concealed or deposited, upon any reasonable suspicion that the same has been stolen or fraudulently obtained, may issue his warrant for seizing and detaining the same, and for apprehending and bringing before any Justice, the person in whose possession the same shall be found; and if he shall not satisfactorily account for the possession thereof, or it shall not appear that the same was purchased by him at the head office for stamps in Westminster or Edinburgh, or for some distributor or sub-distributor of stamps, or some licensed vendor, such stamped vellum, parchment, and paper, or such part thereof of which no account or no satisfactory account shall be given, or which shall not appear to have been so purchased, shall be forfeited to His Majesty, and shall be accordingly condemned by such Justice, and be delivered over to the Commissioners of Stamps, who shall keep the same for the space of six calendar months, and afterwards cancel and destroy the same, or dispose thereof for the use of His Majesty's revenue, as they shall think fit: provided always, that if at any time within six calendar months next after such condemnation any person shall make out to the satisfaction of such Justice that the vellum, parchment, or paper so forfeited, or any part thereof, was or were stolen or otherwise fraudulently obtained from him, and it shall also appear that the same was or were purchased by him at either of the said head offices, or from some distributor or sub-distributor or licensed vendor of stamps as aforesaid, such person may have the same, or such part thereof as shall be so proved to have been stolen or fraudulently obtained from him, delivered up to him, on producing a certificate under the hand and seal of such Justice that the right of such person therein hath been duly proved: Provided also, that no such certificate shall be given unless

notice in writing under the hand of such Justice shall be given to the Solicitor of Stamps seven clear days at the least previously to the day of hearing any claim, in respect of such stamped vellum, parchment, or paper, of the time and place appointed for such hearing.

3 & 4 Vict. c. 96.

For the regulation of the duties of Postage.

Sect. 22.—If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any die, plate, or other instrument, or any part of any die, plate, or other instrument, which hath been or shall or may be provided, made, or used by or under the direction of the Commissioners of Stamps and Taxes, or by or under the direction of any other person or persons legally authorized in that behalf, for the purpose of expressing or denoting any of the rates or duties which are or shall be directed to be charged under or by virtue of the authority contained in the recited Act of the last session of Parliament [2 & 3 Vict. c. 52] or under or by virtue of this Act; or shall forge, counterfeit, or imitate, or cause or procure to be forged, counterfeited, or imitated, the stamp, mark, or impression, or any part of the stamp, mark, or impression, of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, upon any paper or other substance or material whatever; or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument resembling or intended to resemble either wholly or in part any die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid; or shall stamp or mark, or cause or procure to be stamped or marked, any paper, or other substance or material whatsoever, with any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid; or shall use, utter, sell, or expose to sale, or shall cause or procure to be used, uttered, sold, or exposed to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any paper, or other substance or material, having thereon the impression or any part of the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp or impression, resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for the stamp, mark, or impression of any such die, plate, or other instrument, which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit; or if any person shall, with intent to defraud her Majesty, her heirs or successors, privately or fraudulently use, or cause or procure to be privately or fraudulently used, any die, plate, or other instrument so provided, made, or used, or hereafter to be provided, made, or used as aforesaid, or shall with such intent privately or fraudulently stamp or mark, or cause or procure to be stamped or marked, any paper or other substance or material whatsoever with any such die, plate, or other instrument as last aforesaid; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any paper or other substance or material so privately or fraudulently stamped or marked as aforesaid; every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for any term not less than seven years, or to be

Forging die, &c.

Forging the stamp of die, &c.

Having in possession a forged die, &c.

Stamping with a forged die, &c.

Using, selling, or having in possession paper with the impression of a forged die, or with a forged stamp.

Fraudulently using a genuine die.

Having in possession paper fraudulently stamped.

Felony.

imprisoned for any term not exceeding four years nor less than two years, as the Court shall award.

NOTE.—As to fraudulently taking off stamps with intent to use them again, or using any stamps so taken off, &c., see "POSTAGE STAMPS."

4 & 5 Vict. c. 56.

Certain frauds under 55 Geo. III. c. 184, and 55 Geo. III. c. 185, not to be punishable with death.

Sect. 1.—Reciting that by the 55 Geo. III. c. 184, it was among other things enacted, that if any person should privately and secretly use any stamp or die which should have been provided, made, or used in pursuance of that Act, or of any former Act or Acts relating to any stamp duty or duties, with intent to defraud his Majesty, his heirs or successors, of any of the said duties, or any part thereof, or if any person should fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which should have been provided, made, or used, in pursuance of that or any former Act, for expressing or denoting any duty or duties under the care and management of the Commissioners of Stamps, or any part of such duty or duties, from any vellum, parchment, or paper whatsoever, with intent to use the same, for or upon any other vellum, parchment, or paper, or any instrument or writing, charged or chargeable with any of the duties thereby granted, every such person, and every person knowingly and wilfully aiding, abetting, or assisting any person or persons in committing any such offence, shall be adjudged guilty of felony, and should suffer death as a felon, without the benefit of clergy: and also reciting that, by the 55 Geo. III. c. 185, it was among other things enacted, that if any person should transpose or remove, or cause to be transposed or removed, from one piece of gold or silver plate to another, or to any vessel or ware of base metal, any impression made with any mark, stamp, or die, which should have been provided, made, or used, in pursuance of that or any former Act, for the purpose of marking or stamping any such gold or silver plate as aforesaid, or if any person should sell, exchange, or expose to sale, or export out of Great Britain, any such gold or silver plate, or any vessel or ware of base metal, having thereupon any impression of any mark, stamp, or die which should have been transposed or removed from any other piece of plate as aforesaid, knowing the same respectively to be transposed or removed as aforesaid; or if any person should privately and secretly use any mark, stamp, or die so provided, made, or used as aforesaid, with intent to defraud his Majesty, his heirs, or successors, every person so offending, and every person knowingly and wilfully aiding, abetting, and assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, should be adjudged guilty of felony, and should suffer death as a felon, without benefit of clergy: and that it was expedient that the said several offences should no longer be punishable with death: it is enacted that if any person shall be convicted of any of the offences hereinbefore specified, such person shall not be subject to any sentence, judgment, or punishment of death, but shall, instead, be liable, at the discretion of the Court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than seven years, or to be imprisoned for any time not exceeding three years.

Punishment.

Sect. 6.—None of the said offences to be tried at the General or Quarter Sessions.

7 & 8 Vict. c. 22.

Plate.

To amend the laws in force for preventing frauds in the marking of gold and silver wares in England.

Forging, &c., dies for marking plate.

Sect. 2.—The following offences are declared to be felony, subject to transportation for any term not exceeding fourteen, nor less than seven years; or

imprisonment, with or without hard labour, for any term not exceeding three years, *viz.*:—

Forging a die provided or used by any of the companies of goldsmiths, or guardians of the standard of wrought plate, for marking plate.

Marking any ware of gold or silver, or base metal, with any such forged die; or knowingly uttering any ware so marked.

Forging, upon any such ware, the mark of any die so provided or used.

Transposing the mark of any die so provided or used, from one ware to another; or, knowingly, uttering any transposed mark.

Having in possession, without lawful excuse, any such forged die, or any ware with the mark of a forged die, or any such forged or transposed mark thereon, knowing the same to be forged or transposed.

Severing from any ware the mark of any die so provided or used, with intent that the same may be affixed to any other ware.

Affixing to any ware any mark so severed.

Using, with intent to defraud her Majesty, or any of the said companies, any such genuine die.

All persons counselling, aiding, or abetting, to be, also, guilty.

Sect. 3.—Dealers in plate selling, or having in possession, &c., any wares, with forged or transposed marks thereon, to forfeit 10*l.*, to be sued for by any of the companies.

Sect. 4.—Such persons to be relieved from the penalties on discovering offenders.

Not to exempt parties from the consequences of knowingly uttering or being possessed of wares with forged marks thereon.

Ireland.

For the enactments relating to fraud and forgery in Ireland, see 47 Geo. III. sess. 2, c. 15, s. 16; and 56 Geo. III. c. 56, ss. 34, 37, 38, 39, 48, and 58, in the "APPENDIX."

It is now to be understood, that the capital punishment for all offences under the Stamp Laws, is repealed; although it could be wished that this had been accomplished in a more satisfactory manner than by the course adopted for the purpose; if that object has, in point of law, been effected.

The 1 Will. IV. c. 66, which takes away the capital punishment in cases of forgery generally, is sufficiently comprehensive, in its terms, to embrace, so far as it extends, offences relating to forgery under the Stamp Laws; but there are certain offences, constituted by those laws, of a somewhat minor character, although punished capitally, which the language made use of in that statute could not, by any possibility, be held to include; it was, therefore, questionable, whether the Stamp Acts were, at all, in the contemplation of the legislature, when the 1 Will. IV. c. 66, was passed; and on

this Act being presented to the notice of Mr. Justice *Patteson*, on the conviction of a prisoner of forgery under one of the Stamp Acts, at the Exeter assizes in August, 1833 (*a*), that learned Judge entertained so much doubt upon the subject, that he deferred passing sentence; and, at the following assizes, capital punishment was awarded, and the prisoner was transported for life; the Judges having, in the meanwhile, determined that the 1 Will. IV. c. 66, did not extend to any of the Stamp Acts.

Notwithstanding this decision, however, the legislature did not think proper to make any law, expressly repealing the capital offence under these Acts, in general, but enacted the clause in the 4 & 5 Vict. c. 56, extending only to those offences which could not, by any construction, be comprised within the 1 Will. IV. c. 66, thus leaving the law precisely as the Judges had determined it to be, as to the offences not specified in the subsequent Act; unless this latter Act is to be considered as a silent interpretation of the legislature in passing the former one; which, in mercy and expediency, it is presumed it ought to be; and yet a contrary presumption would be quite consistent with the opinion of the Judges; because the offences described in the 4 & 5 Vict. c. 56, being of a nature involving a lower degree of guilt, might, with consistency, be treated as deserving a less amount of punishment; and, therefore, that the capital punishment still remains for the offences of the higher order. This question should not remain in doubt.

Using a stamp a second time by erasing names.

Previously to the 12 Geo. III. c. 48, an action was brought, under the 1 Anne, stat. 2, c. 22, for the penalty of 20*l.*, for writing a matter, liable to stamp duty, on a piece of paper, whereon there had been before written another matter, chargeable with stamp duty. The facts appeared to be as follows:—the defendant, in 1760, executed, in England, a letter of attorney, duly stamped, appointing two persons to collect certain debts in Newfoundland; one of the parties took it with him to Newfoundland, but received nothing under it. In 1769, the defendant erased the names of the former attorneys, and substituted that of the plaintiff, and re-executed it, in the presence of witnesses, without its being, again, stamped. A case was stated for the opinion of the Court of King's Bench, whether stamp duty was payable on a letter of attorney, made in England, for such purpose; and, whether, by the erasure, the defendant had incurred the penalty. The Court held the affirmative on both points (*c*).

(*a*) *The King* v. *Hope*. (*c*) *Stonelake* v. *Babb*, 5 Burr. 2675.

The alteration must be fraudulent.

A defendant was indicted, under the 12 Geo. III. c. 48, for feloniously writing a certain instrument, liable to stamp duty, on paper on which had been before written another instrument, liable to stamp duty, without getting it re-stamped; the case being that of altering a printed form of licence to let horses for hire, granted to a person of the name of *Hinckley*, for a particular year, (such licences being annual,) into another, to the same party, for a subsequent year. An objection was taken that the act should have been alleged to have been fraudulently done. Lord *Abinger* said, "I consider no fraud is proved; to come within the words of the Act, it is not necessary that it should have been fraudulently done; still, I am of opinion, that if a person innocently, and without any intent to defraud, wrote anything on this paper, it could not be an offence. Whether fraud was intended is a question for the jury."

In summing up, his Lordship, again, said, "The Act of Parliament does not say, that an intent to deceive or defraud is essential to constitute this offence; but it is a serious question, whether a person doing this thing innocently, and intending to pay the stamp duty, is liable to be transported. I am of opinion, and I hope I shall not be found wrong, that to constitute this offence there must be a guilty mind. It is a maxim, older than the law of England, that a man is not guilty, unless his mind be guilty. If a person, through mistake, thought he could alter this licence, and send 7*s*. 6*d*. to Somerset House, that would be a felony, in law, no more than it would be in reason, justice, or common sense. If the defendant meant to defraud the government of 7*s*. 6*d*., he is guilty, but, as it would have been easily proved, if the duty had not been paid on Mr. *Hinckley's* licence, and no such evidence has been given, I think you should presume in favour of innocence. You will say whether you think that the defendant intended to commit a fraud. You may find that he made the alteration in the licence, but that he did so without any fraudulent intent; and I can put the matter in a train of investigation; or you may, (and you have a right if you think proper to do so,) find a verdict of not guilty." The jury having returned a verdict of not guilty, his Lordship added, "The jury have a right to take the whole matter into consideration; I cannot direct them to find special facts in a case of felony" (*d*).

The doctrine laid down by the learned Judge in this case, is entirely acquiesced in, there must be an intention of fraud in the

(*d*) *The Queen* v. *Allday*, 8 C. & P. 136.

transaction; and so the Commissioners of Stamps were of opinion when they instituted this prosecution; it would, indeed, be a grave reflection upon any public board to suppose, that they would endeavour to fix upon an individual the consequences of a felony, in the absence of a fraudulent intent; but the question of fraud is one for the jury, under all the circumstances exhibited. In many instances, the intention of fraud is a necessary inference from the act committed, without further proof; as in the ordinary case of erasing matter from a stamped instrument, which had effected its object, and converting it into another instrument, liable to stamp duty, without getting it again stamped. In such a case no further evidence of fraud could be required; it would rest upon the party charged to rebut the necessary presumption, by the evidence of some circumstances indicating the absence of this ingredient; there being no other mode of paying the duty than by getting the new instrument stamped. But, it may be asked, why then was not the evidence in *Allday's case*, of the actual conversion of one licence into another, proof of fraud? It remains to be explained why it was not. The defendant was an officer of the Board, being a collector of the post-horse duties, appointed by the Commissioners, on behalf of his son, the nominal farmer of the duties; and it was part of his business to issue licences to post-masters, for letting horses to hire; for which purpose stamped printed forms of licences were consigned to the farmer, who was debited in account with the duties thereon, and was required annually, during the term of his contract, to return to the Board, from time to time, the names of the person to whom licences were granted; from the peculiarity of the case, it was deemed necessary, therefore, in order to establish a charge of fraud in the transaction, to show that the duty on a second licence to *Hinckley* had not been accounted for by the farmer; which might have been the case, notwithstanding he had not, regularly, granted him a licence; and that the defendant himself was implicated in the fraud, if any was committed. The evidence to show this was intricate, involving the production of various accounts and returns during several years; some of these were objected to, and could not be read; and the proof of a guilty intention on the part of the collector, altogether failed.

In the above case that of the *Queen* v. *Page* (*e*) was alluded to; which was an indictment for uttering counterfeit money, by giving, in charity, a half-crown, with a knowledge of its being counterfeit;

(*e*) 8 C. & P. 122.

there Lord *Abinger* observed, "Although the statute says nothing about defrauding, yet, in the proof, it is necessary, in my opinion, to go beyond the mere words of the statute, to show an intent to defraud some person."

A perfect resemblance to the genuine stamp not essential to constitute a forgery.

To constitute the offence of forgery of a stamp it is not necessary that there should be a perfect resemblance to the original. A prisoner was indicted for forging a medicine stamp; the counterfeit being similar to the genuine stamp, in some parts only. The dissimilar parts were cut out and the space was concealed. The prisoner was charged, also, with uttering the counterfeit stamp in that state. He was found guilty on both charges. It was objected, that the counterfeit was not a sufficiently near resemblance to the genuine stamp to constitute a forgery; but the Court held otherwise. Mr. Justice *Grose*, (who delivered the judgment,) observed, that an exact resemblance, or *fac simile*, was not required to constitute the crime of forgery; for if there was a sufficient resemblance to show that a false making was intended, and that the false stamp was so made as to have an aptitude to deceive, that was sufficient,

The stamp need not be particularly described in the indictment.

Another objection taken was, that the indictment was deficient in not setting out or describing what the stamp was that was forged; it, merely, charged the prisoner with having forged a certain *mark*, and with having uttered a certain paper with a forged and counterfeit *mark*, resembling a mark provided, made, and used in pursuance of the Act; other counts describing it as a *stamp*. The Court held this sufficient; the indictment contained all the words that the Act required to constitute the offence (*f*).

(*f*) *Rex* v. *Callicott*, 2 Leach, 1048; 4 Taunt. 300; 2 Russ. & Ry. 212, 229.

Instruments.

UNDER this head, it is proposed to comprise all enactments, and other matters relating to Instruments, in general, which do not, exclusively, apply to subjects of charge ranging under particular titles.

5 Will & Mary, c 21.

Granting Stamp Duties in England, Wales, and Berwick-upon-Tweed

Vellum, &c, to be brought to be stamped before written upon.

Sect 9 —All vellum, parchment, and paper, intended to be charged with the said duties, before any of the matters or things therembefore mentioned are written thereon, is to be brought to the head office of the Commissioners, or some other Sub Commissioner or officer to be appointed for that purpose, to be stamped, and the said Commissioners, Sub-Commissioners, and officers are empowered, and required, forthwith, upon demand made, to stamp any quantities or parcels of vellum, parchment, or paper, on payment of the duties, without any other fee or reward Such stamp to be a sufficient discharge for the duties.

Penalty for writing on vellum not duly stamped

Sect 11 —If any person engross or write, or cause to be engrossed or written, upon any vellum, parchment, or paper, any of the matters or things for which the same is charged to pay any duty, before the same is stamped as aforesaid, or upon which there is not some stamp or mark resembling the same, or which is stamped for any lower duty than the duty payable for what is so engrossed, &c, thereon, such person to forfeit 500*l* [Reduced to 5*l* by 6 Will III c 12]

Public officer offending to lose his office

And in case any clerk, officer, or person entitled, or entrusted, in respect of his office or employment, to engross, &c, any records, deeds, instruments, or writings charged with duty, be guilty of any fraud, to forfeit his office, &c — See "Public Officers"

If an attorney, not to practise

And any attorney guilty of such fraud or practice, being convicted thereof, to be disabled to practise —See "Attorneys and Solicitors"

Penalty of 5*l* to be paid on stamping a deed, &c

And if any deed instrument, or writing whatsoever, charged with the payment of a duty as aforesaid, be, contrary to the true intent and meaning of this Act, written or engrossed by any person whatsoever (not being a known clerk or officer, who, in respect of any public office or employment, is intitled to the making, writing, or engrossing the same,) upon vellum, parchment, or paper, not stamped according to this Act, or stamped for a lower duty as aforesaid, then, and in every such case, to be due, answered, and paid to their Majesties, (over and above the duty aforesaid,) for every such deed, instrument, or writing, the sum of 5*l*, and no such record deed, instrument, or writing, to be pleaded, or given in evidence in any Court, or admitted in any Court to be good, useful, or available, in law or equity, until as well the said duty, as the said sum of 5*l* be first paid, and a receipt produced for the same, under the hand or hands of some of the officers appointed to receive duties, and until the vellum, parchment, or paper on which such deed, instrument, or writing is written, or made, be stamped with a lawful stamp And the said officers are

required, upon payment or tender of the said duty, and sum of 5*l.*, to give such receipt, and to stamp the vellum, &c.

Sect. 15.—To prevent fraud in the duties, all records, writs, pleadings, proceedings, deeds, instruments, and writings hereby charged, to be engrossed and written in such manner as they are accustomed to be written.—See "PROGRESSIVE DUTIES."

Instruments to be written in the usual manner.

6 Will. III. c. 12.

Sect. 7.—*The penalty of 500l. in the said Act to be altered, and changed* into a penalty of 5*l.* only; to be recovered with costs of suit.

9 Will. III. c. 25.

Granting additional duties.

Sect. 59.—This clause contains the same provision as to writing on the vellum, &c., before it is stamped with the additional duty, as the 5 Will. & Mary, c. 21, s. 19; with the exception that the penalty and the sum payable on stamping the instrument is, in each case, 10*l.*

1 Anne, stat. 2, c. 22.

For preventing frauds in the duties. See "FORGERY."

Sect. 5.—All writings, matters and things, (in respect whereof any of the said duties are payable,) to be written in such manner that some part thereof shall be either upon, or as near as conveniently may be to the marks or stamps which shall be placed upon the vellum, &c., whereupon the same is engrossed; upon pain that the person writing or engrossing, or causing to be written or engrossed any such writing, matter, or thing, contrary to the tenor and true meaning of the Act, shall forfeit 10*l.* with costs of suit.

Writing to be upon or near to the stamps.

9 Anne, c. 23.

As to Bills of Lading and Debentures. See "BILLS OF LADING," &c.

10 Anne, c. 19.

Granting additional duties.

Sect. 104.—The vellum, &c., before any of the matters or things therein mentioned are written thereon, to be stamped with the additional duty.

Sect. 105.—A similar provision to those in the 5 & 6 W. & M. c. 21, s. 19, and 9 Will. III. c. 35, as to writing on the vellum, &c., before it is stamped, is contained in this clause; the penalty for writing the instrument being 10*l.*, and that on stamping it afterwards, 5*l.* The same is likewise enacted, (with slight variation,) in the following Acts granting additional duties, viz.:—10 Anne, c. 26, s. 71; 12 Geo. I. c. 33, s. 8; 32 Geo. II. c. 35, s. 4; 2 Geo. III. c. 36, s. 4; 5 Geo. III. c. 47, s. 4; 17 Geo. III. c. 50, s. 23.

12 Anne, stat. 2, c. 9.

Granting additional duties.

Sect. 24.—Where any one or more of the matters or things hereby charged

Several duties

to be charged for several matters in one deed.

with stamp duty, shall be engrossed, written, entered, or registered upon one piece of vellum, parchment, or paper, the duties shall be charged upon every one of such matters and things respectively.

30 Geo. II. c. 19.

One stamp may denote several duties.

Sect. 18.—To prevent the multiplication of stamps, the Commissioners, instead of the distinct stamps directed to be provided to denote the several duties charged by different Acts, may provide one new stamp to denote the same.

19 Geo. III. c. 66.

See "Progressive Duties."

23 Geo. III. c. 58.

Repeal of exemptions in Turnpike Acts, &c.

Sect. 13.—All parts of Acts relating to any turnpike, highway, paving, road, bridge, inclosure, navigation, or canal, or other matter or thing, passed before the 5th Dec. 1782, which exempt any mortgage, assignment, transfer, or other security for borrowing money, or any nomination, contract, bond, warrant, judgment, or other writing whatsoever, liable to stamp duties, from being stamped, repealed.

Exceptions thereto.

Sect. 14.—This repeal not to extend to any transfer of any public or government stocks or funds; or to any instruments, documents, or other writings whatsoever, concerning the public revenue, or public funds, or to any other writing expressly exempted from the Stamp Duties by any Act of Parliament granting any such duties, unless where such exemption has been repealed.

37 Geo. III. cc. 19 & 90.

See "Progressive Duties."

37 Geo. III. c. 111.

Additional duty of 10*s.* on any deed.

Granting an additional duty of 10*s.* on every deed, with the exception of certain indentures of apprenticeship, and also of certain leases, as explained in the 39 & 40 Geo. III. c. 72, s. 13.

Sect. 8.—No deed to be liable to be stamped with more than one such stamp, nor to the regulations of any Act of the present session, respecting the stamping thereof according to the quantity of common-law sheets written thereon.

37 Geo. III. c. 136.

Instruments stamped with stamps of proper amount but wrong denomination.

Sect. 1.—Reciting that from the variety of stamps provided for different purposes, mistakes may arise, and that, in many instances, instruments cannot be stamped after execution without paying accumulated penalties, enacts that vellum, &c., with any instrument, (except bills and notes,) written thereon, liable to any stamp or stamps of a particular denomination or value, but having any stamp or stamps thereon of a different denomination, but of equal or greater value, may be stamped with the proper stamp or stamps on payment of one penalty of 5*l.* without making any allowance for the duty already thereon.

Sect. 2.—Any skin or piece of vellum or parchment, or sheet or piece of paper, on which any matter or thing (except bills and notes) has been written, not having any stamp thereon, or stamped with a stamp of less value than required, may be stamped on payment of the proper duty, and one penalty of 10*l.* only, for every skin, or piece of vellum, &c., or sheet or piece of paper, although the duty payable for the same may have been imposed by more than one Act of Parliament, and notwithstanding the penalties thereon may have accumulated to a larger sum than 10*l.*

Vellum, &c., not duly stamped, may be stamped on payment of 10*l.*

Sect. 3.—Provided that where the Commissioners are satisfied, by oath to be made before one or more of them, that any instrument whatever, required by law to be written on stamped vellum, &c., has not been written on vellum, &c., duly stamped, from accident, inadvertency, urgent necessity, or unavoidable circumstances, and without intention of fraud, and the same is brought to be stamped within 60 days after the making or execution thereof, they may remit the penalty payable on stamping the same.

The penalty may be remitted, within 60 days.

38 Geo. III. c. 85.

Sect. 4.—The duties chargeable on vellum, parchment, and paper, in respect of any matter or thing engrossed, written, or printed thereon, to be charged, raised, levied, and paid, upon every other material, of what nature or kind soever, on which any of the said matters or things shall be engrossed, printed, or written; and be secured in like manner as the duties on vellum, &c., are directed to be charged, ascertained, and secured by the laws in force.

The duties to be charged on other materials as well as vellum, &c.

Sect. 5.—All the powers, provisions, rules, regulations, methods, articles, clauses, penalties, and forfeitures, and all other matters and things in any Act in force relating to the said duties, to be in full force and effect with relation to the duties on all the materials as aforesaid, and be applied and put in execution for raising, levying, recovering, collecting, and securing the said duties on such materials.

39 & 40 Geo. III. c. 72.

Sect. 1.—Grants of fee-farm and other rents, sold by the Duchy of Lancaster, for sums not exceeding 10*l.* to be exempt from duty.

Exemptions.

Sect. 13.—Reciting the exemption contained in the 37 Geo. III. c. 111, of leases not exceeding 21 years, where the improved rent did not exceed 10*l.*, and leases for lives where the fine did not exceed 20*l.* and the rent 40*s.* from the duty of 10*s.* thereby granted, enacts, that the said duty shall be construed to extend to every deed, which by law may form, or is intended to form a part of any conveyance where a greater interest is conveyed than a term of 21 years, whatever may be the value thereof.

Explaining exemption in 37 Geo. III. c. 111, as to leases.

39 & 40 Geo. III. c. 84.

Sect. 2.—Any copy, purporting or attested to be a true copy of an indenture, lease, or other deed, and liable to stamp duty, brought within sixty days after the date of the attestation, may be stamped on payment of the duty only, without any penalty.

Attested copies may be stamped without penalty.

43 Geo. III. c. 127.

Sect. 5.—Any vellum, parchment, or paper, upon which any instrument, matter, or thing, (except bills and notes,) is engrossed, printed, or written, liable to be stamped with a stamp or stamps of a particular denomination, and whereon is impressed any stamp or stamps of a different denomination, but of sufficient amount.

Instruments with improper stamps but of sufficient amount.

equal or greater value, may be stamped without the payment of the penalty of 5*l.* imposed by the 37 Geo. III. c. 136.

Instruments with stamps of greater value than required to be valid.

Sect. 6.—Every instrument stamped with a stamp of greater value than required by law, to be valid and effectual, provided such stamp be of the proper denomination.

44 Geo. III. c. 98.

Repealing all existing Stamp Duties, and granting new ones.

No single instrument to be stamped under more than one head.

Sect. 11.—No single instrument, article, matter, or thing, by this Act subject or liable to only one specific duty, to be charged or chargeable under two or more separate and distinct heads, or denominations.

Sect. 14.—As to who shall draw conveyances. See "ATTORNEYS AND SOLICITORS."

The penalty payable on stamping any deed may be remitted within twelve months.

Sect. 24.—In any case, where it shall appear to the Commissioners, upon oath or affirmation made before one of them, or otherwise, to their satisfaction, that any instrument, matter, or thing, (except bills and notes,) has been engrossed, printed, or written, on vellum, parchment, or paper, not duly stamped, either by accident, or inadvertence, or from urgent necessity, or unavoidable circumstances, and without any wilful delay, or intention to evade the duty or defraud His Majesty, and the same is brought to the Commissioners to be stamped within 12 months after the making or execution thereof, the Commissioners may remit the penalty payable on stamping the same, or any part thereof; and all persons concerned in engrossing, &c., the same, to be freed from all other penalties. Not to alter the power to stamp receipts, vested in the Commissioners.

48 Geo. III. c. 149.

Repealing certain former duties and granting others in lieu.

For the special provisions in this Act, relating only to conveyances on sales and mortgages, see "CONVEYANCE ON SALE," "MORTGAGES."

Old stamps may be used for new duties.

No single stamp to be used for two distinct duties.

Sect. 5.—The Commissioners may issue vellum, &c., stamped for denoting any duties repealed, to be used for instruments charged with new duties, of the same amount; and, also, if expedient, stamp vellum, &c., with additional stamps to make up the increased duty: Provided always, that no vellum, &c., having a single stamp, shall be used for any instrument, matter, or thing requiring two or more distinct stamps, though of equal amount therewith; nor, bearing a stamp appropriated, by name, to any particular instrument, be used for any other purpose, or if so used, the same shall be of no avail.

50 Geo. III. c. 35.

Sect. 13.—For rectifying mistakes made in the use of stamps on deeds. See "SPOILED STAMPS."

Stamps of any denomination but of sufficient value to be good.

Sect. 16.—All instruments for or upon which any stamp or stamps have been or shall be used, of equal or greater value than the instruments required, but not of the proper denomination, shall nevertheless be deemed valid and effectual in the law, except in those cases where the stamps used shall have been specially appropriated to any other instrument by having its name on the face thereof. See also 55 Geo. III. c. 154, s. 10 (*post*).

Where leases granted to third persons.

Sect. 17.—Where a lease is granted to a sub-contractor, the duty to be chargeable on the money paid to the intermediate party. See "CONVEYANCE ON SALE," pp. 214, 216, 228, *ante*.

53 Geo. III. c. 108.

Sect. 5.—This Act contains certain provisions relating to *ad valorem* duties on conveyances upon sale, but which have been superseded by subsequent enactments. See "CONVEYANCE ON SALE."

Sect. 20.—Appointments by the Crown or the Treasury may, under the authority of the Treasury, be stamped without penalty.

55 Geo. III. c. 184.

Repealing duties granted by the 48 Geo. III. c. 149, and granting others in lieu; for which, so far as they are still payable, see the TABLE.

Present duties.

Sect. 8.—All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties, contained in and imposed by the several Acts of Parliament relating to the duties hereby repealed, and the several Acts relating to any prior duties of the same kind or description, to be of full force and effect, with respect to the duties hereby granted, and to the vellum, parchment, and paper, instruments, matters, and things, charged or chargeable therewith, as far as the same are applicable, in all cases not hereby expressly provided for; and to be observed, applied, enforced, and put in execution, for the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise relating thereto, so far as the same are not superseded by, and are consistent with the express provisions of this Act, as fully and effectually, to all intents and purposes, as if the same had been herein repeated, and specially enacted with reference to the duties hereby granted.

The provisions of former Acts to continue in force.

Sect. 10.—All instruments for or upon which any stamp or stamps shall have been used of an improper denomination, or rate of duty, but of equal or greater value, in the whole, with or than the stamp or stamps which ought regularly to have been used thereon, shall be, nevertheless, deemed valid and effectual in the law; except in cases where the stamp or stamps used have been specially appropriated to any other instrument, by having its name on the face thereof.

Stamps of any denomination, but of sufficient value, to be good.

The schedule, part 1, to the Act annexed, contains under the heads "CONVEYANCE" and "MORTGAGE" various notes as to the duties on conveyances on sale, and mortgages: for which, see the TABLE. See also "CONVEYANCE ON SALE," "MORTGAGE."

1 & 2 Geo. IV. c. 55.

To remove doubts as to the amount of Stamp Duties to be paid on deeds and other instruments, under the several Acts in force in Great Britain and Ireland respectively.

Reciting that by the laws in force relating to the Stamp Duties payable in Great Britain and Ireland respectively, different rates of duty were payable in respect of deeds, agreements, and other instruments; and that doubts had arisen as to the cases in which the same were chargeable with one or other or both of the said different rates of duty: for the removal of such doubts it is enacted, that every deed, agreement, or other instrument, which shall relate wholly to any real or personal property in Ireland, or to any matter or thing (other than the payment of money) to be done in Ireland, shall be chargeable with such Stamp Duties as are or shall be payable by the laws in force for imposing and regulating the Stamp Duties in Ireland, and not with any other Stamp Duty; and that every deed, agreement, or other instrument, which shall

Stamp Duties on deeds relating to property, &c., in Ireland and Great Britain respectively,

how to be charged.

relate to any real or personal property in Great Britain, or to any matter or thing (other than the payment of money) to be done in Great Britain, or elsewhere than in Ireland, shall be chargeable with such Stamp Duties as are or shall be payable by the laws in force for imposing and regulating the Stamp Duties in Great Britain; and that every deed, agreement, or other instrument, which shall relate to any real or personal property in Ireland, or to any matter or thing (other than the payment of money) to be done in Ireland, and also to any real or personal property in Great Britain, or elsewhere than in Ireland, or to any matter or thing (other than the payment of money) to be done in Great Britain or elsewhere than in Ireland, shall be chargeable with such Stamp Duties as are or shall be payable by the laws in force for imposing and regulating the Stamp Duties in Great Britain, and not with any other Stamp Duty: Provided always, that every such deed, agreement, or other instrument, shall be charged and chargeable with such Stamp Duties accordingly, and no more, whether the same shall be engrossed and executed at any place or places within the United Kingdom, or at any place or places not within the United Kingdom, and whether any of the parties to such deed, agreement, or other instrument, shall be resident in or executing the same at any place, either in Great Britain or Ireland, or elsewhere; and that any deed, agreement, or other instrument duly stamped pursuant to this Act, shall not be liable to any Stamp Duty by reason of the same also containing any covenant, agreement, or obligation, for the payment of any sum or sums of money, at whatever place such money may be made payable, or may by law be payable.

NOTE.—This latter provision is repealed so far as relates to money payable in Ireland by the 3 & 4 Geo. IV. c. 117, s. 5.

As to charging Stamp Duty on bonds for payment of money.

Sect. 2.—Every bond, covenant, and agreement, for securing the payment of money only (where the money so secured shall not be also charged or secured upon or issuing out of any real or personal property), shall be liable to Stamp Duty in manner following; (that is to say,) where there shall be only one obligor or covenantor or person liable to pay such money, or where the obligors, covenantors, or persons liable shall be all resident in Great Britain, or shall be all resident in Ireland, such bond, covenant, or agreement shall be charged with the Stamp Duty payable in that part of the United Kingdom in which such obligor or obligors, covenantor or covenantors, or person or persons liable, shall *bonâ fide* reside at the time of the execution of such bond, covenant, or agreement; and where some or one of several obligors, covenantors, or persons liable to the payment of the money secured by any such bond, covenant, or agreement, shall at the time of the execution thereof be *bonâ fide* resident in Great Britain or elsewhere not in Ireland, and some other or others shall be *bonâ fide* resident in Ireland, the residences of such persons shall be respectively truly described and expressed in such bond, covenant, or agreement; and such bond, covenant, or agreement shall be charged with the Stamp Duty payable in Great Britain, and not with any further or other Stamp Duty: Provided always, that the payment of any rent or of any annuity shall be deemed to be the payment of money within the meaning of this Act.

Not to affect Stamp Duties on Bills.

Sect. 3.—Provided, Nothing in this Act contained to be construed to extend in any case to alter or affect the Stamp Duties payable in respect of Bills of Exchange or Promissory Notes, or to charge with Stamp Duty any checks, drafts, or orders, which are not now liable to such duty.

Stamped deeds to be given in evidence.

Sect. 4.—Every deed, bond, covenant, agreement, or other instrument, stamped according to the provisions of this Act, may, so far as may respect the Stamp Duties thereon, be given in evidence in any and every Court of Law or Equity, either in Great Britain or Ireland.

3 Geo. IV. c. 117.

Sect. 1.—As to transfers of mortgage. See "MORTGAGE," *post*. See also

TABLE, where the enactment is embodied in the item of charge, under the same head.

Sect. 5.—The provision in 1 & 2 Geo. IV. c. 55, s. 1, that deeds stamped pursuant to that Act shall not be liable to duty by reason of the same also containing any covenant, &c., for payment of money, at whatever place the same may be payable, repealed so far as relates to money payable in Ireland.

A part of sect. 1 of 1 & 2 Geo. IV. c. 55 repealed.

6 Geo. IV. c. 41.

Sect. 1.—Repealing the Stamp Duties on transfers of Ships. See General Exemptions at the end of the TABLE, part 1.

Duties on transfers, &c., of ships repealed.

1 & 2 Vict. c. 85.

Any deed or instrument liable to Stamp Duty in either part of the United Kingdom, (Great Britain or Ireland respectively,) and for or upon which any stamp or stamps denoting duty payable in the other part of the Kingdom shall have been, or shall be used, of equal or greater amount with or than the duty chargeable thereon, to be nevertheless valid. Not to extend to the Law, Chancery or Exchequer fund duties in Ireland; nor to authorize the using for any instrument of any stamp specially appropriated to any other instrument, by having its name on the face thereof.

Deeds in Great Britain stamped with Irish stamps and *vice versâ* to be good.

4 Vict. c. 21.

For rendering a release as effectual for the conveyance of freehold estates as a lease and release.

Every deed or instrument of release of a freehold estate, or deed or instrument purporting or intended to be a deed or instrument of release of a freehold estate, executed after the 15th May, 1841, and expressed to be made in pursuance of this Act, to be as effectual for the purposes therein expressed, and to take effect as a conveyance to uses, or otherwise, and operate in all respects in law and equity, as if the releasing party or parties who shall have executed the same had also executed, in due form, a deed or instrument of bargain and sale, or lease for a year, for giving effect to such release, although no such deed or instrument of bargain and sale or lease for a year be executed: Provided that every such deed or instrument, so taking effect under this Act, shall be chargeable with the same amount of Stamp Duty as any bargain and sale or lease for a year would have been chargeable with, (except progressive duty,) if executed to give effect to such deed or instrument, in addition to the Stamp Duties which the same shall be chargeable with as a release, or otherwise, under any act relating to Stamp Duties.

Release to be effectual though no lease for a year be executed.

Provided it be stamped with the lease for a year duty as well.

7 & 8 Vict. c. 76.

For simplifying the transfer of property.

Sect. 2.—Every person may convey by any deed, without livery of seisin, or enrolment, or a prior lease, all such freehold land as he might before the passing of this Act have conveyed by lease and release, and every such conveyance shall take effect as if it had been made by lease and release: Provided that every such deed shall be chargeable with the same Stamp Duty, as would have been chargeable if such conveyance had been made by lease and release.

Freeholds may be conveyed without livery, &c.

Sect. 3.—No partition, or exchange, or assignment of any freehold or leasehold land to be valid in law unless the same be made by deed.

Partition, &c., to be by deed.

Sect. 4.—No lease or surrender in writing to be valid unless the same be

No lease or sur-

render to be made except by deed.

made by deed; but any agreement to let or to surrender, to be valid as an agreement to execute a lease or surrender; and the person in possession in pursuance of any agreement to let, may from payment of rent or other circumstances be construed to be a tenant from year to year.

Act repealed.

This Act, in respect of the clauses specified, was in operation only from the 1st January, to the 1st October, 1845, both inclusive.

8 & 9 Vict. c. 106.

By this Act the 7 & 8 Vict. c. 76, was wholly repealed.

A deed effectual by this clause to be stamped as a lease and release.

Sect. 2.—After the 1st October, 1845, all corporeal tenements and hereditaments, as regards the conveyance of the immediate freehold, shall be deemed to lie in grant as well as livery; and every deed, which by force of this enactment shall be effectual as a grant, shall be chargeable with the Stamp Duty with which the same deed would have been chargeable, in case the same had been a release, founded on a lease, or bargain and sale for a year, and also with the same Stamp Duty, (exclusive of progressive duty,) with which such lease or bargain and sale would have been chargeable (*a*)

Certain conveyances to be by deed.

Sect. 3.—A feoffment, not made under a custom by an infant, shall be void in law, unless evidenced by deed; and a partition, and an exchange, (not of copyholds,) and a lease required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not copyhold, and not being an interest which might by law have been created without writing, shall be void in law, unless made by deed. Not to extend to Ireland so far as relates to a release or a surrender.

Sect. 10.—This Act not to extend to Scotland.

(*a*) Inquiry is frequently made at the Stamp Office, as to the liability of a particular conveyance of freehold property to this lease-for-a-year duty; which can only be answered by another question, in the words of the Act, *viz.*: Whether the deed is to be effectual, as a grant, by force of this enactment? that is, Whether it is to have the operation given to it of a lease and release? If, without any aid to be derived from the statute, the deed operates as a grant of the estate to be conveyed in the land, then, the lease-for-a-year duty is not, of course, required. Any point of this kind, the professional man engaged in preparing the deed, and who knows the legal effect it is to have, must dispose of himself; should a doubt, however, be suggested whether the grant is effectual without the assistance of the Act, it would not be judicious to forego the stamp.

THE subject-matter of this chapter will be treated of under the following subdivisions, *viz.*:—

I. THE LOCAL EXTENT OF THE OPERATION OF THE STAMP LAWS.
II. THE STAMPING OF EXECUTED INSTRUMENTS.
III. THE ADMISSION OF UNSTAMPED INSTRUMENTS IN EVIDENCE FOR COLLATERAL PURPOSES, OR OTHERWISE; AND HEREIN, AS TO SECONDARY EVIDENCE.
IV. THE DUTIES ON INSTRUMENTS RELATING TO SEVERAL DISTINCT PARTIES OR MATTERS.
V. THE EFFECT OF ALTERATIONS MADE IN INSTRUMENTS AFTER EXECUTION.
VI. THE PROPER TIME FOR OBJECTING TO THE ADMISSIBILITY OF AN UNSTAMPED INSTRUMENT IN EVIDENCE.
VII. THE POWER OF ENFORCING THE PRODUCTION OF AN INSTRUMENT TO BE STAMPED.
VIII. MATTERS RELATING TO SPECIAL PLEADING IN REFERENCE TO STAMP DUTIES.
IX INSTRUMENTS SUBJECTED TO THE COMMON DEED DUTY.

See, also, the Introductory Chapter, for various matters not capable of being designated under any general head.

I. THE LOCAL EXTENT OF THE OPERATION OF THE STAMP LAWS

Instruments executed within the kingdom.

THE scope of the operation of the Stamp Laws, when the duties were first imposed, was, England, and, after the union with Scotland, Great Britain. The language of the present general Stamp Act (*b*), adopting that of the former statutes, is, "that there shall be raised, levied, and paid, unto and for the use of His Majesty, His heirs and successors, in and throughout the whole of Great Britain, for, and in respect of, &c.;" no instrument, therefore, was liable to British Stamp Duty, unless it was made in Great Britain. The same may be said, relatively, with regard to Ireland, and the

(*b*) 55 Geo. III. c. 184, s. 2.

Irish Stamp Duties; the Acts respecting which, are, for the most part, quite distinct, but in the same terms. See *Ximenes* v. *Jaques* (c), which was an action on an agreement made at sea, and held, therefore, by Lord *Ellenborough*, not subject to the Stamp Laws.

But it was immaterial whether the instrument related to property, or to any matter to be done, within the kingdom, or not; it was liable to duty, in any case, if it was made within the kingdom. See *Stonelake* v. *Babb* (d), where it was determined on a case stated for the opinion of the Court of King's Bench, that a Power of Attorney, executed in England, authorizing the receiving of debts in Newfoundland, was subject to Stamp Duty.

Instruments executed abroad.

The enactments, have, however, had a very important legislative interpretation, if not a direct extended operation, given to them, by the 1 & 2 Geo. IV. c. 55. This Act is stated to be "An Act to remove Doubts as to the Amount of Stamp Duties to be paid on Deeds, and other Instruments, under the several Acts in force, in Great Britain, and Ireland, respectively;" and the immediate object of it would seem to have been, to settle the point, which had frequently arisen, whether British or Irish duties were payable in certain cases; but it is not confined to this; it charges with Stamp Duty, all instruments which deal with property situate within any part of the United Kingdom; or, which relate to any act to be done there, or elsewhere; "*whether the same shall be engrossed and executed at any place or places within the United Kingdom, or at any place or places not within the United Kingdom; and whether any of the parties shall be resident in, or executing the same at any place either in* GREAT BRITAIN, *or* IRELAND, *or* ELSEWHERE." The Act must, however, have some limit in its interpretation; it could not, reasonably, be contended, that an instrument made in a foreign country, whether a British dependency or not, relating to matters entirely foreign, should be subject to the tax, if offered in evidence within the kingdom; and, but for this express enactment, it might have been fairly insisted, that no instrument was, notwithstanding the comprehensive terms, also, made use of in the earlier part of the clause, within the scope of the Act, unless it came, likewise, within the operation of one or other of the Acts imposing the duty, by being an instrument in Great Britain, or Ireland, at the time of its execution; but the positive, unequivocal, language already quoted, puts this point

(c) 1 Esp. 311. (d) Page 264, *ante*.

beyond doubt. The distinction between the British and Irish duties is now immaterial, since such duties are the same in amount in both parts of the kingdom, and may be denoted by the stamps used in either; consequently, the only effect now to be given to the Act in question, is, the important one alluded to, that of charging stamp duty on instruments executed abroad, if they relate to property, or to matters to be done, within the kingdom.

This special provision, in extending the operation of the stamp laws, does not, in any manner, affect the old principle upon which the duties were imposed, as exemplified in *Stonelake* v. *Babb;* therefore, an instrument made in Great Britain, or in Ireland, is still liable to duty, although it does not relate to property within the United Kingdom, or to any act to be done there.

Conveyances of property in the colonies.

It is known to the writer that opinions have been entertained, and which are, occasionally, still acted upon, that deeds of conveyance, executed in England, of property situate in the colonies, are not chargeable with stamp duty; or, at all events, that conveyances of such property, upon sale, if liable to duty, at all, are not subject to the *ad valorem* duty. That these opinions are erroneous seems, scarcely, to admit of a doubt. The aid of the 1 & 2 Geo. IV. c. 55, is not required to refute them. It seems indisputable that every instrument, coming within the description of any in the schedule to the general Stamp Act, if made, that is, executed by any party, in this kingdom, becomes, immediately, the subject of charge, according to the principle alluded to; and it seems, also, to follow, as of course, that coming, thus, within the purview of the general enactment, subjecting all instruments to duty, and referring to the schedule for the *quantum* of such duty, it ranges itself, as any other instrument would do, under the head to which it particularly has reference. It is argued that where property, of any kind, is mentioned in the Stamp Act as the subject of conveyance, upon sale, or by way of mortgage, it must mean, property in Great Britain. That if it were to be construed to extend to property in the colonies, it would be a departure from the well known principle, that a settled colony is not liable to be affected by a British Act of Parliament, unless expressly named, or otherwise sufficiently designated; and that it would be a departure, too, in effect, from the principle of the statute 18 Geo. III. c. 12, by which Parliament renounced the right of taxing the West Indies. It will be perceived that this argument, although referring to particular heads of duty, only, goes to the whole subject, and involves the general question, whether any duty, at all, attaches; for, if the

tax be upon the property in one case, it is, also, in the other; else, it is a question of amount, only, and not of principle, and the latter must be conceded. It is, likewise, remarked by way of argument, that the Stamp Act, itself, furnishes evidence that where it imposes duty on the conveyance of real estate at least, it refers to real estate in Great Britain, only; for that it frequently marks the distinction between such property when situate in England, and when in Scotland, but never when elsewhere; and the title "Bargain and Sale" is alluded to. This reference to particular instruments relating to modes of conveyance exclusively applying to England, or Scotland, certainly affords no reason for excluding from any sufficiently comprehensive description, instruments actually operating to convey property situate abroad, where sold for, or mortgaged to secure sterling money in Great Britain. And in the case of a conveyance of lands in the colonies by lease and release, although the lease for a year is not chargeable with *ad valorem* duty, as a bargain and sale, it, nevertheless, is with the common deed duty.

It has already been observed that upon the original principle, alone, of charging the stamp duties in England, conveyances, executed in this country, of land in the colonies, are liable to *ad valorem* duties; the point is, however, put beyond doubt by the very comprehensive words of the 1 & 2 Geo. IV. c. 55, which declares that the British stamp duties shall extend to all instruments relating to property in Great Britain, or elsewhere, not being, alone, in Ireland; although, of course, it is admitted, that unless executed here, and, therefore, within such original principle, deeds relating to matters, exclusively, abroad, are not chargeable with any stamp duty in this country. An observation was made by Mr. Justice *Perrin*, in a case in Ireland (*e*), which may be supposed, in some measure, to favour the view entertained adverse to the *ad valorem* duties in such cases, *viz.*, that he was not satisfied that the Stamp Act imposed a duty on conveyances of land in every part of the world. This remark, however, was made in reference to the case of an instrument stamped with 35*s.*, purporting to be a mortgage of land in the Dutch colony of Surinam, a foreign country, which instrument was not shown to be, and which seems to have been agreed was not an effectual mortgage according to the law of that colony, but amounted only to an agreement to make a mortgage, and was liable only to the common deed duty (*f*).

(*e*) *Campbell* v. *Hynes*, 8 Ir. L. Rep. (*f*) See the remarks page 7, *ante*.

There can be no doubt that an instrument of this kind, wholly ineffective as a conveyance, by reason of its relating to land in a foreign country, is not chargeable with *ad valorem* duty; but this goes no way towards establishing a similar exemption in the case of deeds which are effectual to convey lands in the British colonies.

Thus it will be seen, that the instruments charged with Stamp Duty are the following, *viz.* :—

First,—Instruments made (that is, executed by any party) within the United Kingdom, relating to property, or matters to be done within the kingdom, or elsewhere; and,

Secondly,—Instruments made out of the kingdom, relating to property, or matters to be done, within it.

Instruments relating to the payment of money.

It will be observed, that in the first clause of the 1 & 2 Geo. IV. c. 55, in every alternative, where the country, in which the act to be done is to be the criterion for charging the duty, whether British or Irish, the payment of money is excepted, so that the place where money is provided, or agreed, to be paid, is not an act to be done which will control the Stamp Duty. This relates to the instruments subsequently described; *viz.*, bills of exchange and promissory notes, which are altogether excepted from the operation of the Act; and to bonds, covenants, and agreements, for securing the payment of money, (not also charged upon, or issuing out of, any real, or personal property,) for which special provision is thereby made, but which it is not now essential to notice, since the duties in England and Ireland are assimilated.

The description of instrument, which is, probably, more frequently than any other, affected by this new law, if it may be so termed, imported by the 1 & 2 Geo. IV. c. 55, is, that of Letter or Power of attorney, for the performance of any matter within the kingdom; and the change, which has often been the subject of remark, as having, some years since, taken place in the practice of the Bank of England, and other public companies, in requiring powers of attorney, executed abroad, to be stamped, is to be attributed to this alteration in the law; although it is believed that the necessity for it was not discovered by many of such establishments for a considerable period after the passing of the Act.

In practice, very little difficulty or inconvenience is involved in this extension of the duty. With the exception, perhaps, of powers of attorney, in certain instances, the majority of instruments, thus charged, are prepared and engrossed in this country, and sent out to be executed; the strict law is capable, therefore, of being complied with, as in ordinary cases, by writing the instruments on the

proper stamps; but if, to avoid the risk of loss, they are sent out without stamps, or are prepared abroad, the Commissioners will not require the payment of a penalty on stamping them, if they are brought to the head office immediately on their being received in this country; provided a year has not elapsed since the execution by any party. This, of course, must be understood not to apply to cases where the Commissioners possess no power to stamp an instrument after it is executed, or to remit the penalty; respecting which, see the next division of the chapter.

It is remarkable, that one, only (*g*), of the learned writers on the stamp laws has adverted to this important feature in the Act in question; the clause can, scarcely, have escaped observation; the omission, however, is, probably, to be attributed to the attention being diverted from the consideration of the full effect of the statute, by the title and preamble; which have, no doubt, been taken as limiting the enactments to the disposal of the point between the British duty, and the Irish duty, in the cases where one or other of those duties was, already, charged; although, in fact, they do not indicate such a limit.

Foreign revenue laws not noticed here.

It appears to be considered as a settled point, by all legal writers who have treated on the subject, although condemned, as indefensible on moral grounds, by nearly all jurists, foreign and domestic, that no country takes notice of the revenue laws of a foreign state. It was so said by Lord *Mansfield* in *Holman* v. *Johnson* (*h*); and, in *James* v. *Catherwood* (*i*), it was held as settled, or considered to be so ever since the time of Lord *Hardwicke*, that a British Court cannot take notice of the revenue laws of another country. The authorities, however, upon the question, are, scarcely, capable of being reconciled, so far as stamp duties are concerned; the cases, in reference to such duties, previously to that of *James* v. *Catherwood*, are, altogether, adverse to the doctrine as stated to be settled.

In *Alves* v. *Hodgson* (*k*), a promissory note, made in Jamaica, was refused in evidence because it was not stamped according to the laws of that colony; the Court observing that resort must be had to the laws of the country where the note was made; and that if it was not good there, it could not be obligatory here. And in *Clegg* v. *Levy* (*l*) Lord *Ellenborough* said, he should clearly hold, that if a stamp was necessary to render an agreement valid at Surinam, it

(*g*) Mr. Mockler, in his excellent work on the Stamp Laws in Ireland.
(*h*) Cowp. 143.
(*i*) 3 D. & R. 190.
(*k*) 2 Esp. 528; 7 T. R. 241.
(*l*) 3 Camp. 166

would not be received in evidence, without that stamp, here; a contract must be available by the law of the place where it was entered into, or it was void all over the world; but he would not dispense with strict proof of the foreign law; it being a written law, a copy was required to be given in evidence, as in *Inglis* v. *Usherwood* (*m*), and *Bohtlingk* v. *Inglis* (*n*).

British colonies.

Alves v. *Hodgson* and *Clegg* v. *Levy*, are, generally, referred to, as establishing a distinction between foreign independent states, and the British colonies; but no allusion was made to any such distinction in the judgment, in either case; nor was any argument attempted to be founded upon it, on one side or the other; and the broad principle upon which the decisions were come to, admits of no limit in its operation. The point seems to have been recently entertained by the Court of Common Pleas, by granting a rule *nisi* to set aside a verdict obtained on two bills, not stamped according to the law of Belgium (*o*). Conceding, however, such principle to be, altogether, repudiated in the case of foreign powers, the reason for it, *viz.*, the absence of reciprocity, does not apply to the British Colonies.

Ireland.

Whatever may be, at present, considered, or hereafter determined, to be the law, or the practice in this respect; and, whether or not the distinction alluded to may now, or at any time exist, no analogy to the case of the Colonies can be drawn, as regards Ireland, so as to exclude the principle laid down in the cases last-mentioned. Ireland being a component part of the United Kingdom, governed by laws enacted by the same legislature, the duties in both parts going to the same consolidated fund, and the rules of evidence being the same in both, it would be absurd to admit, as evidence, in one part, an instrument which, for want of a stamp, (or indeed for any other cause,) would not be received in the other; more particularly since the passing of the 1 & 2 Geo. IV. c. 55; applying, as it does, to the United Kingdom; and the 1 & 2 Vict. c. 85, authorizing the use, indiscriminately, of British or Irish Stamps, to denote the duties in any part of the kingdom; and, also, the Act assimilating the duties throughout. Towards establishing this view, the opinion of the Lord Chief Justice of the Common Pleas, in England, may be referred to, in *Gatliffe* v. *Bourne* (*p*), in which his Lordship refused to admit in evidence,

(*m*) 1 East, 515.
(*n*) 3 East, 381.
(*o*) *Legrelle* v. *Davis*, 5 Law T. 54.
(*p*) 1 Arnold, 82.

certain bills of lading, made in Ireland, but not stamped as required by the Irish Stamp Act.

There is no difference, in effect, between the enactments in Great Britain and Ireland, respectively, upon this question, notwithstanding the variation in the terms used in the respective statutes. That relating to Great Britain, (originally applicable to England only,) provides, that no instrument, unless duly stamped, shall be admitted in *any* Court to be good, &c.; but the provision respecting Ireland is, that no such instrument shall be admitted in any Court *in Ireland*, &c. The terms made use of in one case, although general, are not to have a more extended relative operation given to them, than those in the other; they cannot, in either case, have been intended to apply to places beyond the limits to which the duties respectively related, and no effect is to be given in one instance which is denied in the other. It could not, for a moment, be contended, that the 5 W. & M. c. 21, imposing the first Stamp Duties in England, and which contains the general provision (sect. 11) alluded to, had, when enacted, any reference to, or any authority in either Ireland, or Scotland; and, although it has, by express enactment, been since made applicable to the Stamp Duties throughout Great Britain, it remains the same in regard to Ireland. The rule, therefore, which renders an instrument unavailable in one part of the kingdom, if not stamped with the duty to which it is liable in another, must be looked for elsewhere than in any express prohibitory law; it is to be found in the principle upon which the decisions have proceeded in the case of the colonies, strengthened by the considerations before mentioned.

II. The Stamping of Executed Instruments.

THIS division will point out the following particulars, *viz.*:

The penalties payable on stamping written instruments.

The instruments that are allowed to be written without stamps; and which may, therefore, be stamped, afterwards, without penalty.

The instruments that cannot be stamped after they are made or signed, or after a fixed period; and which are, therefore, void, if not stamped accordingly.

The effect of commencing proceedings on an unstamped instrument; and the assistance afforded by the Court in procuring it to be stamped.

Paper to be stamped before written upon.

A penalty to be afterwards paid.

Instrument not available until paid.

It is required that the vellum, parchment, and paper, chargeable with stamp duty, in respect of matters and things written thereon, shall be stamped, to denote the proper duty, before any of such matters and things are so written; but provision is made for, afterwards, affixing the stamp, in cases where this has not been attended to, on payment of the duty and a further sum, by way of penalty; and, it is enacted, that, in any such case, no deed, instrument, or writing, shall be pleaded, or given in evidence, in any Court; or be admitted in any Court to be good, useful, or available, in law, or equity; until, as well the said duty, as the penalty, shall be paid, and a receipt produced for the same; and until the instrument shall be stamped.

Amount of penalty payable.

The statute (5 W. & M. c. 21), which first imposed stamp duties, contains these enactments, the penalty being 5*l.*; the Acts whereby the duties were, from time to time, increased, or whereby new ones were granted, contained, likewise, similar provisions applicable to such additional, or new duties; the penalty, in some instances, being 10*l.*; so that clauses and penalties, of the same description, accumulated, in reference to different stamps upon the same instrument. As to the penalties, this was remedied by the 37 Geo. III. c. 136, which allowed instruments to be stamped, on payment of a single penalty of 10*l.*, in lieu of such accumulated penalties; but when, at length, all these duties were repealed, and new, consolidated duties granted instead, the Commissioners reverted to the original statute, and required the penalty of 5*l.* only; although, for a while, and until advised to the contrary, they continued to receive the 10*l.* penalty. It should be observed, that

the penalty payable on stamping an instrument is quite distinct from that (originally by the 5 W. & M. c. 21, s. 9, 500*l.*, but, by the 6 Will. III. c. 12, s. 7, reduced to 5*l.*) imposed on any person for writing, or causing to be written, an instrument on paper, &c., not duly stamped; the distinction does not, however, appear to have been properly understood by all the learned writers on the stamp laws.

The Commissioners may remit the penalty in some cases.

The Commissioners are authorized, by the 44 Geo. III. c. 98, s. 24, to remit the whole or any part of the penalty payable on stamping an instrument, at any time within twelve months after the making or execution; but beyond that period they have no discretion; the penalty must be paid; if, therefore, an instrument, liable to duty, be proved to have been, at any time after the expiration of such period, unstamped, a Court of Law, having regard to the positive enactment alluded to, cannot receive it unless accompanied by a receipt for the duty and penalty. But the Court will not, in any case, inquire whether the penalty paid was the proper one, or not. See *Rex* v. *Preston* (*a*). The query put by Mr. Justice *Patteson* in that case, "Would the Court inquire whether any penalty had been paid, if they saw that the document had a proper stamp?" may be said to have been suggested without a due regard to the strict law, however reasonable, and worthy of consideration, the suggestion might be.

It has been observed that the penalty payable on stamping an instrument is 5*l.*; but this is not uniform. In the case of agreements under hand, liable to the duty of 2*s.* 6*d.*, the penalty is 10*l.* where the duty is not paid within fourteen days; and in the case of progressive duties it is, also, 10*l.* within six calendar months; and, after that period, in some instances, 10*l.* for every skin, &c., of which the instrument consists, is payable; although in this case of progressive duties, where the Commissioners, within the twelve-month, require a penalty to be paid, they, generally, exercise the power they possess of remitting a portion, by reducing it to 5*l.* See "PROGRESSIVE DUTIES." See also "BILLS and NOTES," *page* 132; "CHARTER PARTY," *page* 197; and "RECEIPTS," for the circumstances, and the terms, under which any of these instruments, respectively, may be stamped.

To the provisions which require instruments to be written on the proper stamps; and to those which allow of the stamping afterwards, on payment of a penalty, there are, respectively, exceptions.

(*a*) 5 B. & Ad. 1029; 3 N. & M. 31.

1st. *Exceptions from the law requiring instruments to be written on stamps.*

Instruments that may be written without stamps.

AGREEMENTS under hand only, not containing more than fifteen folios, need not be written upon stamped paper, they may be stamped within fourteen days, without penalty. See "AGREEMENTS."

Agreements.

CHARTER-PARTIES are, also, permitted to be stamped, without penalty, within fourteen days after they are first signed; and after fourteen days, and within one calendar month, on payment of 10*l.*; but after the latter period they cannot be stamped at all. (7 Vict. c. 21, s. 5).

Charter-parties

RECEIPTS may in certain cases, under the authority of the Commissioners previously given, be written without stamps; in which cases the payment of the duties is secured by bond, and the writings are available without being stamped. See "RECEIPTS."

Receipts.

2ndly. *Exceptions from the provision allowing instruments to be stamped after they are written.*

ARTICLES OF CLERKSHIP to Attorneys the Commissioners are prohibited from stamping after the expiration of six calendar months from the date thereof; nor will they stamp them within that period except on payment of a penalty of 5*l.* See *page* 96.

Articles of clerkship.

APPRENTICESHIP INDENTURES are, by the old Acts, the subject of special provision as to stamping; but see the observations, *page* 88.

Indentures of apprenticeship

BILLS OF EXCHANGE and PROMISSORY NOTES cannot be stamped after they are written, except where they happen to be impressed with stamps of a wrong denomination, but of a sufficient value. See *page* 115.

Bills and notes.

BILLS OF LADING cannot be stamped, under any circumstances, after they are signed; and any person signing an unstamped bill of lading incurs a penalty of 50*l* See *page* 197.

Bills of lading.

LETTERS OF ATTORNEY or PROXIES for voting at any meeting of proprietors of Joint-stock Companies, and chargeable with the duty of 2*s.* 6*d.* are not allowed to be stamped after they are written; and a penalty of 50*l* is incurred by signing any such proxy not written on paper duly stamped. See *page* 59.

Proxies.

POLICIES OF SEA INSURANCE are forbidden to be stamped after they are underwritten; except Policies of Mutual Assurance, not underwritten for more than the stamp, already impressed thereon, will cover. See "INSURANCE."

Sea policies.

Receipts.

RECEIPTS cannot be stamped after a month from the date, nor within that period, without a penalty. See "RECEIPTS."

Regulations of the Board as to stamping deeds.

The regulations adopted by the Commissioners, as to stamping instruments after they are executed, may be here mentioned. If an instrument, not being one of those alluded to in the foregoing exceptions, be brought to be stamped, it must, before it is handed to the officer, to have the stamp impressed, be first taken to the Solicitor's Office, in order that the proper duty may be marked upon it. At the time it is thus produced it must bear its true and proper date; and if such date be within six weeks preceding, and be written legibly, and without erasure, the amount of the duty required, and other particulars will be written upon the instrument, in pencil, by a clerk in the Solicitor's Office, and subscribed with his initials, which will be sufficient authority for stamping it, the duty being first paid. Should there be any doubt as to the date inserted, or should any part of the date be on an erasure, the penalty will be required, unless evidence be produced, showing the day on which the instrument was signed, by the party who first executed it, to be within six weeks. Where that period is exceeded, but a twelvemonth has not elapsed, the Commissioners have still the power to remit the penalty (*b*); but they decline to exercise it, except under peculiar and special circumstances, which must be set forth in a memorial addressed to them.

If an instrument, executed abroad, be brought without delay after its arrival in this country, the penalty will not be insisted upon, although the ordinary period has expired, provided the discretion has not been taken away by the lapse of a year from the time of the execution by any party.

Writings unlawfully stamped after the making.

Bills and notes.

IT is to be considered as clearly settled, that instruments stamped after the making thereof, contrary to express enactments upon the subject, cannot be received in evidence. See the cases relating to bills of exchange and promissory notes, page 174, *ante*; from which it will be seen that an inquiry, as to when the stamp on a bill or note was impressed, is admissible; and that any such stamp will go for nothing, if it shall appear to have been impressed after the instrument was signed.

In *Rex* v. *Preston* (*c*), the Court said, that when an Act of Par-

(*b*) 44 Geo. III. c. 98, s. 24, page 272, *ante*.

(*c*) *Ante*, page 286.

liament required an instrument to be stamped within a given time, and declared that it should be void if not so stamped, it might be necessary to inquire when the stamp was affixed, but that, otherwise, the time of stamping could not be inquired into; and that there was no case in which the Court had entered into the question, whether the right penalty had been paid.

Receipts.

In *Lucas v. Jones* (*d*), a paper, stamped with 20*s.* as an agreement, was held to be a receipt, and was, therefore, not admitted in evidence; Mr. Justice *Patteson* observing that if the 10th sect. of the 55 Geo. III. c. 184, availed in such a case, all receipts might be made valid at any time. No allusion seems to have been made to the 3 & 4 Will. IV. c. 97, and to the fact of specific stamps, for receipts, having been provided under it; the 35 Geo. III. c. 55, merely, was referred to, which prohibited the stamping of receipts after the expiration of a month.

Sea policies.

Lord *Ellenborough*, in *Roderick* v. *Hovil* (*e*), said, that the statute which prohibited the stamping of sea policies was imperative upon him; and he refused to admit a policy which had been stamped, on payment of a penalty, after a former trial.

Indentures of apprenticeship.

Indentures of apprenticeship, have, also, been held to be void, if not stamped within the period limited by the old statutes relating to them (*f*). But see the observations, before alluded to, p. 88.

Unstamped instruments not void.

When Stamp Duties were first imposed, two modes of securing the payment of them were adopted; one, that of imposing a penalty for writing an instrument on unstamped property; the other, that of enacting that the instrument should not be pleaded, given in evidence, or admitted, in any Court to be good, useful, or available, until it was stamped; the latter being, by far, the most efficacious. But there is no enactment which declares an unstamped writing to be void; the absence, therefore, of any such enactment, and the circumstance of the provision for stamping, on certain conditions, are a sufficient indication of intention not to deprive an instrument of its due effect and operation, but merely to prevent its being used as evidence whilst it is unstamped; so that an instrument, although not written upon a stamp, is effective from its commencement, but is incapable of being made use of, to show its operation, until it is stamped.

Cannot be set aside for want of stamps.

This principle has always been well understood; and attempts, from time to time made to set aside proceedings, or instruments,

(*d*) 13 L. J. R. (N. S.) Q. B. 208.
(*e*) 3 Camp. 103.
(*f*) *Rex* v. *Chipping Norton*, 5 B. & Ald. 412.

for want of stamps, have proved unavailing; and instruments, if produced duly stamped, have been admitted in evidence without regard to the time when the stamps were impressed, in those cases where it was not unlawful to affix the stamp after the instrument was made. This remark must be received subject to some qualification, both as to costs and otherwise, as will appear from the cases herein referred to.

Warrant of attorney on which judgment entered up.

So early as the 4 Will. III., application was made to the Court of King's Bench to set aside a judgment, entered up on a warrant of attorney which was written on the same paper as a bond, on the ground that the paper had not two stamps upon it; but the Court said, that there might be reason to refuse such a warrant of attorney in evidence, but there was none for making all void, for there was nothing in the Act that imported that (*g*). But see *Pitman* v. *Humfrey*, p. 292, *post*.

Judgment had been entered up on a warrant of attorney insufficiently stamped; and, after a rule obtained to show cause why the judgment should not be set aside, a proper stamp had been impressed. It was contended that the instrument was *functus officio*, and, as it was invalid for want of a stamp, it could not be made available, afterwards. *Gibbs*, C. J., said that there was no foundation for the proposition, that when an instrument, in any legal proceedings, had been produced with an insufficient stamp, it could not be rendered available by having a proper stamp affixed. His Lordship added, "If an instrument were produced at the trial, with a defective stamp, and rejected, and it should be stamped in the course of the trial, I should be of opinion that it would be available" (*h*).

Instruments whenever stamped, good by retrospection.

Law proceedings not stamped.

In *Taylor* v. *Lake* (*i*), it was moved to set aside the verdict because the *distringas*, which it was at *nisi prius*, was not stamped; but the plaintiff producing it, stamped, the Court would do nothing in it, since the penalty must have been paid, and then it was as good as if stamped at first; the defendant should have taken notice of it at the trial.

Award

On motion to set aside an award, as having been made on an improper stamp, the Court agreed with counsel that the application was made too early; if the plaintiff had taken any step to enforce the award it would have been a good objection, but it might now be made a valid instrument, by procuring the proper stamp,

(*g*) *Anon.* Salk. 612. (*h*) *Burton* v. *Kirkby*, 2 Marsh. 480
(*i*) 1 Strange, 575; 8 Mod. 226.

and paying the penalty. In its present form it might be considered a nullity, and so not the object of any motion at all (*k*).

Deed.

In *Rex* v. *The Bishop of Chester* (*l*), upon error from Lancaster, it appeared that a patent, produced in evidence, was not stamped at the time of sealing, nor when first produced, but was stamped when produced at the trial; the Court held that it had been properly received, for, they said, it was never intended to avoid deeds that were not stamped, but only to add a penalty to enforce the duty.

Probate.

Chief Justice *Gibbs*, again, in *Rogers* v. *James* (*m*), observed, that it never had been contended, that after a deed had had a proper stamp put upon it, a party claiming under it had not, by retrospection, a good right of action. In that case, the plaintiff, a petitioning creditor as executor of his mother, had been, at a former trial, nonsuited, because the stamp on the probate was insufficient; it was, afterwards, increased, but the objection taken was, that it did not support the commission of bankrupt, by reason of such insufficiency at the time when the commission was issued. See also *Smith* v. *Creagh* (*n*), where the same decision was come to, in the King's Bench in Ireland, in reference to letters of administration.

On a petition in bankruptcy, a question was raised, whether a guarantee, given by the bankrupt, which was not stamped till after the petition was presented, was available against the estate; but the Court said they could not look at the date of the stamp, the writing was, only, not admissible in evidence before it was stamped (*o*).

Cognovit not stamped not to be set aside.

In *Clarke* v. *Jones* (*p*), on a motion to set aside a cognovit, on the ground that it was not stamped, Mr. Baron *Parke* observed, that the objection would be of no avail, as they could get it stamped before cause was shown.

Judgment not to be set aside because the cognovit was not stamped before the judgment was entered.

In *Rose* v. *Tomblinson* (*q*), on a rule for setting aside a judgment entered up before the cognovit was stamped, the Court said, that the time of an instrument being stamped is not what the Courts looked to; it was the constant practice, at *nisi prius*, to receive stamped instruments without inquiring, or requiring it to be in-

(*k*) *Preston* v. *Eastwood*, 7 T. R. 95.
(*l*) 1 Strange, 624; 8 Mod 364.
(*m*) 2 Marsh. 425.
(*n*) Batty, 384.
(*o*) *Ex parte Nicholson, in re Sheppard*, 4 Jurist, 1066; see also *Phelan* v. *Kelly*, Ir. Cir. Rep. 34.
(*p*) 3 Dowl. 277.
(*q*) 3 Dowl. 49.

quired, when the stamp was affixed; and that the same rule applied on their being produced in Court.

Rule to set aside a judgment, entered up on an unstamped warrant of attorney, discharged, without costs; the warrant of attorney being stamped after the rule *nisi* was obtained.

In *Brembridge* v. *Waldman* (*r*), a rule *nisi* to set aside a judgment was obtained, on two grounds; one of them being the want of a stamp on the warrant of attorney; but, before cause was shown, the instrument was stamped; the learned Judge (*Wightman*) being of opinion that this objection was not tenable; and it being inconvenient, where the facts were disputed, to dispose of the point raised by the other objection on a summary application, discharged the rule; but, without costs, it being contended that the plaintiff ought to pay the costs of the application; which was assimilated, by counsel, to the case of a cross rule to amend, pending an application to set aside the proceedings for irregularity, where the amendment is never allowed except on payment of the costs of the first rule.

Judgment set aside where cognovit not stamped at all.

In *Pitman* v. *Humfrey* (*s*) a rule *nisi* was granted, to set aside the judgment and execution, on the ground, that the cognovit, on which the former was entered up, was not stamped when it was filed; and also to take the cognovit off the fine and cancel it; the Court observing, that they could not stay the proceedings; and that the plaintiff might, in the meanwhile, apply to have the cognovit stamped. On cause being shown the Court refused to order the cognovit to be taken off the file; if anything could be made of it, the plaintiff was entitled to it; if not, no injury could arise from its remaining. The following order was made, *viz.*: the judgment and all subsequent proceedings, to be set aside, with costs, the defendant undertaking to bring no action; all other matters, in the rule, to be discharged without costs.

The cognovit was, afterwards, stamped, and a fresh judgment entered up, and execution issued; but a rule was granted to set off the costs of the former rule against the costs of the cause, subject to the lien of the defendant's attorney for his bill.

Doubtful in certain cases as to when instrument ought to be stamped.

The decisions are conflicting, as to the time when the instrument ought to be stamped, in the cases of applications, under the 1 Geo. IV. c. 87, in ejectment, for a rule, calling on the tenant to show cause why he should not enter into a recognizance to pay costs, &c.

In *Doe dem. Phillips* v. *Roe* (*t*) the Court said, that if the

(*r*) 1 Dow. N. R. 774. (*s*) 2 Tyr. 500.
(*t*) 1 D. & R. 433; 5 B. & Ald. 766.

instrument required a stamp, the plaintiff might get it stamped at any time before the trial, and that, if necessary, they would enlarge the rule, in order to enable him to procure the stamp to be impressed.

The contrary was determined in *Doe dem. Caulfield* v. *Roe* (*u*). The rule *nisi* was obtained on the 4th of November, a copy only of the agreement being annexed to the affidavit; on showing cause, the original was produced, which appeared to have been stamped on the 11th of November; and the Court held that this was not sufficient, the rule being grounded on improper evidence, according to the statute, which authorizes the granting of the rule, on producing the lease, or agreement, or some counterpart, or duplicate thereof.

The same point was raised in *Doe dem. Holder* v. *Rushworth* (*x*), but it was not necessary to decide it. Mr. Baron *Alderson* seemed to think that the instrument was not stamped in time.

No sufficient reason would appear to exist for any distinction between cases of this description, and others. The Act, upon which the proceeding is founded, does not, it is conceived, necessarily, require such distinction, merely because it defines the evidence upon which the rule shall be granted. This statute is not more positive, in its terms, than the Stamp Acts themselves, nor, indeed, so much so; since the latter expressly declare that "no record, deed, instrument, or writing, shall be pleaded, or given in evidence in any Court, or admitted in any Court to be good, useful, or available, in law, or equity," until the same be stamped. If this enactment ought to be carried out in the strict terms in which it is framed, scarcely any of the foregoing cases can have been rightly decided. When an instrument is produced, stamped, it must be treated as if it had been stamped from the beginning, except in those cases where the Commissioners are prohibited from affixing a stamp. In an action of covenant, or on a bond, or in any other case where an instrument is pleaded, it was never contended that such instrument was unavailable, because it was not duly stamped until after the pleadings were filed; it has, always, been sufficient, if it was produced, properly stamped, at the trial. It will be said, that on applying for a rule, the party grounds his application on evidence which the Court does not, then, particularly examine, but which it assumes to be sufficient; and that it would not have granted the rule, had it known that the evidence

(*u*) 3 Bing. N. C. 329; 5 Dow. 365. (*x*) 4 M. & W. 74.

was defective; this is no doubt the case; but the objection, on this ground, can no more be said to arise in reference to the statute on which the motion is founded, than on the Stamp Acts, themselves; and the same objection, if valid in this instance, ought to be allowed to prevail, where an instrument, which is the subject of pleadings, is not stamped before the pleadings are filed. See *Taylor* v. *Lake*, and the other cases before mentioned.

In Equity.

In the construction of an Act of Parliament, there is, of course, no difference between Courts of law, and those of equity; and yet, in the latter, the Judge will allow an agreement to be stamped pending the hearing; or will direct the cause to stand over for the purpose of getting the stamp impressed. Indeed, Judges in the Courts of equity have, even, gone so far as to proceed with the hearing of a cause, and to pronounce a decree therein, (the propriety of which, however, may be questioned,) founded upon an agreement not stamped; directing such decree not to be drawn up until the instrument be produced to the Registrar, duly stamped. In every instance where any such course has been pursued, the instrument has, no doubt, been fully set out in the pleadings, and has, probably, been proved by depositions of witnesses; but no objection seems to have been suggested, on the ground that it was not stamped before it was impleaded. Taking all the authorities together, the rule would seem to be, that where an instrument, against the stamping of which, after the making thereof, there is no prohibition, is sufficiently stamped when it is produced for the inspection of the Court, it is not essential, for the regularity of the previous proceedings, to inquire, and, therefore, it should not be open to the inquiry, *when* the stamp was affixed; because, by retrospection, it is good from the first, and must be treated as if stamped at the beginning; but if, when produced, it is not properly stamped, it must be considered as null, because it cannot be looked at, as an instrument, at all. For this purpose, the officers of the Court are the same as the Court itself, and they may, and perhaps ought, to take notice of the want of a stamp. This was done in the case of *Hill* v. *Slocombe* (*y*), where the officer refused to draw up a rule for an attachment for non-performance of an award, in consequence of the award not being stamped; an application was made to Mr. Justice *Williams*, sitting in the Bail Court, for a direction to the officer to draw up the rule, insisting that it was not competent to him to take an objection to the want of a stamp,

(*y*) 9 Dowl. 339.

and that if he did so there would be no opportunity of arguing the question. On a subsequent day his Lordship said, that he had spoken to the other Judges on the case, who thought that the state of the documents being mentioned by the officer when handed in, was equivalent to an intimation which compelled the Court to consider, whether they were in a state to authorize the drawing up of the rule; they were all of opinion that this document was not in such a state, and that the rule could not be drawn up until the award was stamped.

Cause ordered to stand over to get agreement stamped.

In a suit for specific performance, the plaintiff gave the defendant notice to produce a letter, containing an acceptance of the proposal; at the hearing, the plaintiff produced a stamped copy, but the original was produced, and objected to for want of a stamp; and it was, also, objected, that it could not be stamped, twenty-one days having expired, but the Court ordered the cause to stand over to get it stamped (*z*).

Petition ordered to stand over to get letters of administration stamped.

The plaintiff, in *Christian* v. *Devereux* (*a*), presented a petition in that and another suit, praying that the funds in such other suit might not be disposed of until that in which he was the plaintiff, and in which he claimed a portion of such funds, should have been heard and decided. The plaintiff claimed under *Edward Christian*, deceased, to whose estate he had obtained letters of administration, stamped for the lowest amount of property; and it was objected that the petition should be dismissed upon that ground, amongst others.

Upon this point the Vice-Chancellor of England observed, that the plaintiff, notwithstanding the cogency of his case in respect of the largeness of the fund he might lose, contented himself with coming forward in the shape of what might, almost, be called a pauper administrator; at the same time his Honour was willing to admit that, in cases where a claim had been made by an administrator, and the suit had gone on, without any objection being made, the Court had allowed the party to recover at the hearing, if, at the time of the hearing, a proper administration was produced. He thought it would be too harsh to say that the petition should be dismissed, merely because the letters of administration, at the present moment, were not sufficiently stamped. He directed the petition to stand over for a certain short time, to enable the petitioner to get his letters of administration stamped.

(*z*) *Ford* v. *Compton*, 2 Bro. C. C.

(*a*) 12 Sim. 264.

Agreement stamped pending the hearing.

In *Coles* v. *Trecothick* (*b*), an agreement was stamped pending the hearing, and allowed to be read.

Bill and answer read without producing the agreement.

In *Huddlestone* v. *Briscoe* (*c*), the Lord Chancellor referred to the practice of allowing documents to be stamped, for the purpose of evidence, if necessary, pending the hearing. In this case the reading of the bill and answer, which respectively set out, and admitted the contract, for a specific performance of which the bill was filed, was sufficient, without producing the contract itself.

Decree not to be delivered out till agreement stamped.

In *Chervet* v. *Jones* (*d*), and again in *Owen* v. *Thomas* (*e*), both suits for specific performance, the hearing proceeded, and a decree was pronounced, but the Registrar was directed not to deliver it out till the agreement was produced to him, duly stamped. In the latter case, the only evidence of the contract was a letter from the vendor to his solicitor, informing him of his having sold the property, and giving him certain directions; which was held to be a sufficient writing within the Statute of Frauds. The objection, for want of a stamp, the defendant's solicitor had agreed not to take, but this coming to the knowledge of the Master of the Rolls, he expressed great disapprobation at it, observing, that it was a combination to defraud the revenue, which it was the duty of the Court to protect; and felt strongly inclined to dismiss the bill. See also *Harper* v. *Ravenhill* (*f*) and *Bennison* v. *Jewison*, *ante*, p. 168.

There can, scarcely, however, be a doubt as to the irregularity of the course adopted in *Chervet* v. *Jones* and *Owen* v. *Thomas*. There is a material difference between allowing a cause to stand over in order to get a document stamped to enable the Court to read it; and, actually, reading it, and pronouncing a decree upon it, but directing such decree not to be drawn up till the document be stamped. And a sufficient reason why this should not be done, will be found in the remark of the Lord Chief Justice of the Court of Common Pleas in Ireland, in a case where a motion was made, on an affidavit not properly stamped; and it was requested, it being the last day of the term, that the Court would make the order, to be drawn up, only, on production of the affidavit to the officer, duly stamped; but which request was refused; Chief Justice *Doherty* observing, that, for the sake of the revenue, they must not permit a party to take his chance without an affidavit; the consequence would be, that an applicant would only have to

(*b*) 9 Ves. Jr. 234.
(*c*) 11 Ves. Jr. 563.
(*d*) 6 Mad. 267.
(*e*) 3 M. & K. 353.
(*f*) Tam. 145.

provide himself with an affidavit, on a stamp, in case he succeeded in his application; if he failed, he would escape free of duty (*g*). This remark is, equally, applicable to any document, whatever, offered for the opinion of the Court.

Agreement stamped during trial at law.

On a trial at law, in *Beckwith* v. *Benner* (*h*), Mr. Baron *Gurney* consented to allow the party producing an agreement not properly stamped, to go into the rest of his evidence, and send the agreement to the Stamp Office, taking the chance of its coming back in time; but he refused to permit counsel to argue on the sufficiency of the stamp in the meanwhile. And, in *Clements* v. *May* (*i*), where an unstamped instrument was produced, on notice, an officer was directed to accompany the person desirous of getting it stamped, to the Stamp Office, for the purpose of procuring the proper stamp to be affixed, whilst the trial proceeded; counsel assuring the Court that he was not about to call witnesses for the purposes of delay, merely. In this case, the defendant objected to the document, which was his property, being taken from him, and sent to the Stamp Office by the plaintiff, but the learned Judge (*Tindal*, C. J.) observed, that having been produced on notice, it was in the custody of the Court.

Officer directed to go with agreement, produced on notice, to be stamped.

An instrument, though coming from opposite party, must be stamped before it can be read.

It is no answer to the objection for want of a stamp, that the instrument comes out of the hands of the opposite party, and by whose default it was unstamped; and notwithstanding the person on whose behalf it is required to be read, be no party to it, and could not be aware, until it was produced, that it was not stamped (*k*). And the Court will not set aside a nonsuit, on the ground of surprise in the production, by the defendant, of a written unstamped document (*l*).

See subsequent parts of this chapter, as to the admission of unstamped instruments for collateral purposes, and by way of secondary evidence; and, also, as to compelling the production of instruments to be stamped.

(*g*) *Tilly* v. *Geoghegan*, 1 Smyth, 49.

(*h*) 6 C. & P. 681.

(*i*) 7 C. & P. 678.

(*k*) *Doe dem. St. John* v. *Hore*, 2 Esp. 724.

(*l*) *Reid* v. *Smart*, Chitty's Stamp Laws, 3rd edit. 93.

III.—The Admission of Unstamped Instruments in Evidence for Collateral Purposes, or otherwise, and herein, as to Secondary Evidence.

Unstamped instruments admitted in certain cases.

ALTHOUGH, as before observed, it is provided that no instrument, liable to stamp duty, shall be pleaded, or given in evidence, in any Court, or admitted in any Court to be good, useful, or available, in law, or equity, unless it be duly stamped; yet there are instances in which instruments have been allowed to be given in evidence, or have been read by the Court, which have not been stamped as, by law, they ought to have been. To say that the cases are not conflicting, would be to assert a singular instance of uniformity, in reference to the stamp laws, not quite consistent with fact; the result may, however, be stated, in general terms, to be; that an instrument, not duly stamped, may be given in evidence to prove a fact collateral to it; but, in no case, to establish, or give effect to it. The other ostensible reasons for admitting unstamped documents, in certain cases of criminal proceedings, can, scarcely, be said to deprive this rule of its uniform application. The subject has, recently, undergone much careful consideration, in the House of Lords (*m*), in reference to an unstamped receipt; on which occasion all the cases upon the question were minutely reviewed, the principle, admitted to be the correct one, and to be extracted from the decisions, however difficult it might be to apply it to some of them, being as above stated; the expression "collateral purpose" at the same time receiving a more limited interpretation than was given to it in several of the cases alluded to.

Criminal proceedings.

It is proposed to refer, first, to the cases which have arisen in proceedings relating to criminal or fraudulent offences.

Forged bill of exchange read in support of an indictment for the forgery.

On an indictment for forging a bill of exchange, all the Judges held, that the bill, which was not stamped, might, nevertheless, be given in evidence; the Stamp Acts could not affect the law as to forgery; and the offence was complete, whether the instrument was stamped, or not (*n*). In *Reculist's* case, Mr. Justice *Grose* observed, that "the Stamp Acts, being revenue laws, and not

(*m*) *Matheson* v. *Ross*, page 305, *post*.

(*n*) *Rex* v. *Hawkesworth* or *Hawkeswood*, 1 Leach, C. C. 811; 2 East, P. C. 955.

See also *Rex* v. *Davis*, *Rex* v. *Norton*, and *Rex* v. *Reculist*, *ibid.*

intended to affect the crime of forgery, cannot alter the law respecting it; the stamp is not, properly speaking, any part of the instrument, but merely a mark impressed on the paper, to denote the payment of a duty, and is collateral to the instrument itself, and as to the statute enacting, that no promissory note, &c., shall be pleaded, or given in evidence, &c., unless it be duly stamped, the legislature thereby meant only to prevent their being given in evidence, when they were proceeded upon to recover the value of the money thereby secured; it is certain that no holder of such an instrument as the present could, if it had been genuine, have founded an action upon it, and given it in evidence as a promissory note, but it is equally certain, that it might have been given in evidence on other occasions; as, for instance, if a person negotiating it, were to be sued for the penalty inflicted upon the offence of negotiating such an unstamped instrument, there is no doubt but that it might be given in evidence; and this shows, most clearly, that it was properly received in evidence on the trial of this indictment, notwithstanding the seeming prohibitory words of the statute."

By analogy to the case of the forgery of an unstamped bill, an indictment for embezzling exchequer bills, not perfected by lawful authority, was held to be good (*o*).

An unstamped policy read in an action for the penalties.

In an action to recover penalties, for insuring lottery tickets, under the 22 Geo. III. c. 47, a paper, purporting to be a policy of insurance, was offered in evidence, but was objected to for want of a stamp; it was contended that the contract was illegal, and could not be the subject of taxation. Lord *Kenyon* thought it was good evidence, but offered to reserve the point (*p*).

The distinction which has been taken between cases of the foregoing description, and others, that, in the former, the documents, not having any lawful existence, could not be, legitimately, the subject of duty, is sufficiently intelligible; but it is, probably, unnecessary to advert to it; the admission of the document in the one instance, as well as the rejection of it in the other, would appear to be capable of being sustained on the general principle. Mr. Chitty's remarks, in his valuable work on the Stamp Laws, made with the view of reconciling the decisions in admitting the instrument in the case of forgery, and rejecting it in the cases of larceny, about to be mentioned, are not, in the abstract, without point. "Forgery," that gentleman observes, "consists, in giving

(*o*) *Rex* v. *Astlett*, 1 N. R. 5. (*p*) *Holland* v *Duffin*, Peake, 58.

a fictitious value to that which is worth nothing; larceny, in taking from another, something which already has a real value. In the case of stealing, the instrument is averred to be that which it professes, and if, for want of a stamp, that averment cannot be proved, the indictment fails; but, where forgery is imputed, the writing is treated as fictitious on the face of it, and the averments are sustained, without proving that it was, in all respects, a valid instrument (*q*)."

An unstamped note admitted to prove bribery.

In *Dover* v. *Maestaer* (*r*), which was an action under the Bribery Act, an unstamped promissory note, given by a voter, for re-payment of money paid to him for his vote, was allowed to be read in evidence, not for the purpose of giving effect to the note, but, as corroborative of the testimony of the party receiving the money, and in support of the plaintiff's case. See also *Nash* v *Duncombe* (*s*).

An indictment will not lie for stealing an unlawful check.

An unstamped check on a banker, not made payable to bearer, and, consequently, not within the exemption from duty, is not a valuable security, within the meaning of the 7 & 8 Geo. IV. c. 29, s. 5, and is not, therefore, the subject of an indictment for larceny (*t*).

But the check may be admitted to prove the stealing of the letter inclosing it.

A clerk in the Post Office was indicted, under the 1st sect of the 7 Geo. III c. 50, for secreting a letter containing a draft for the payment of money; the draft was a check on a banker in London, purporting to be drawn in London, but, in fact, drawn at a greater distance than allowed by law, and, therefore, void for want of a stamp; it was objected that it was not a draft within the Act. The point was argued before the Judges, whose opinion did not transpire; but the prisoner was pardoned for this specific offence, in order that he might be indicted, under another section, for stealing the letter. On this second indictment, it was objected, that the draft could not be given in evidence to show the stealing of the letter, but the Court held that it might be received for collateral purposes (*u*).

An unstamped policy not admissible on an indictment for burning the house insured by it.

On an indictment for feloniously burning a house, with intent to defraud the insurers, a policy of insurance was produced, with an unstamped memorandum indorsed, that the goods insured had been removed from the house mentioned in the policy, to another, the memorandum was admitted in evidence, and the prisoner was

(*q*) Chitty's Stamp Laws, 2nd edit. page 86.

(*r*) 5 Esp. 92

(*s*) 1 Moo. & Rob. 104.

(*t*) *Rex* v. *Yates*, Carr Crim. Law, 3rd edit. 273.

(*u*) *Rex* v. *Pooley*, 3 B. & P. 311.

found guilty. The opinion of the Judges was taken on the point, when it was understood that six, out of eleven, were of opinion that the evidence was not admissible, and the prisoner was discharged (*x*). In this case, the instrument was used as evidence of the fact contained in it; and in order to establish the case, as charged against the prisoner, it was absolutely necessary to set up the document; or the averment could not be sustained.

Nor an unstamped receipt on a charge of embezzlement.

Again, on an indictment for embezzling money, an unstamped receipt for the money, signed by the prisoner, was rejected, the object of giving it in evidence being to establish the fact it purported to show (*y*).

An unstamped assignment, offered to show intention of fraud, rejected.

Lord *Kenyon*, in an action by the assignees of a bankrupt for a bill of sale delivered by the bankrupt to the defendant, refused to admit in evidence an unstamped agreement, made between the bankrupt and his sons, whereby the former agreed to assign his effects to the latter; which was offered, not for the purpose of establishing the contract, but to show an intention to commit a fraud; he was of opinion that it could not be received for any purpose (*z*). His Lordship took occasion to observe that he did not agree with *Hawkeswood's case*. And in another case (*a*), the Court refused to admit an unstamped assignment of property, to rebut a charge of fraud.

But admitted where it formed part of the fraud.

But on an indictment for a conspiracy, "to cheat and defraud the just and lawful creditors" of one of the defendants, where it was stated, that a part of the intended fraud was the setting up of a fraudulent assignment, which had not been executed till long after its date; and where, with the view of showing the fraud, it was proposed to give in evidence a written agreement, in the handwriting of the defendant; Lord *Tenterden* admitted such agreement, although not stamped, observing, that if a written instrument be charged to be part of a fraud, or other crime, he thought, as then advised, that it was immaterial whether it was stamped or not (*b*).

An unlawful check admitted in a case of fraud, being an ingredient.

Again, in *Keable* v. *Payne* (*c*), an unstamped draft, not coming within the exemption in favour of checks on bankers, by reason of its being drawn at too great a distance from the bankers' residence, and, therefore, invalid, was held to be admissible, as an

(*x*) *Rex* v. *Gilson*, 1 Taunt. 95.
(*y*) *Rex* v. *Hall*, 3 Stark. 67.
(*z*) *Whitworth* v. *Dimsdale*, Peake, 167.
(*a*) *Williams* v. *Gerry*, page 309, *post*.
(*b*) *Rex* v. *Fowle and another*, 4 C. & P. 592.
(*c*) 8 A. & E. 555; 3 Nev. & P. 531.

ingredient in a fraud, practised on the plaintiff by a person who had purchased some bullocks of him, which he sold again to the defendant.

Warrant of attorney, also.

On an indictment for a conspiracy, to obtain certain bills of exchange from the prosecutor, it appeared that the prosecutor refused to accept the bills unless the defendant gave him a warrant of attorney for the sums for which he would be liable; whereupon the defendant executed the necessary warrant of attorney, on unstamped paper. This document was received in evidence, and on a motion for arresting judgment it was held to have been properly admitted. It was not offered with the object of setting it up as a valid instrument, but, merely, to show that it was part of a scheme of fraud, for which purpose it was immaterial whether it was valid or not (*d*).

Document not admitted where it forms no part of the offence.

But, on an indictment for a forcible entry, an unstamped agreement, under which the defendant held, was rejected by Lord *Tenterden;* who observed, that where the indictment is founded on the instrument, the want of a stamp does not signify; that is, where the instrument itself is the crime; but, in the present case, the instrument is introduced collaterally to the offence (*e*).

In cases not of a criminal nature, nor partaking of the character of fraud, the same general principle prevails. It will, perhaps, be a more convenient arrangement, to notice the cases where the instrument was admitted, before referring to any of those in which that evidence was rejected, than to take them in chronological order.

Memorandum indorsed on an unstamped note.

Manly v. *Peel* (*f*) scarcely ranges within the class of cases upon the subject; there, a memorandum, made by the defendant, on an unstamped promissory note, that he had paid a sum for interest, was allowed to be looked at by the jury, as evidence of an admission that a certain principal sum was due. As the note itself was not read, this was no more than if the memorandum, which could not be connected with the note, had been written on a separate piece of paper.

The cases of *Wheldon* v. *Matthews* (*g*) and *Marson* v. *Short* (*h*) have been referred to this head; but they, likewise, have, properly, no connection with it, because the documents admitted in evidence were not liable to stamp duty. In the former it was held, that a

(*d*) *Reg.* v. *Gomperiz*, 11 Jur. 204; 16 L. J. R. (N. S.) Q. B. 121; 9 A. & E. (N. S.) 824.

(*e*) *Rex* v. *Smyth*, 5 C. & P. 201.

(*f*) 5 Esp. 121.

(*g*) 2 Chitty, 399.

(*h*) 2 Bing. N. C. 118; 1 Hodges, 260.

notice of the dissolution of a partnership, without a stamp, might be admitted to prove the existence of the partnership; Lord *Ellenborough* observing, that an instrument used only as evidence of a fact, and not of a contract, did not require a stamp. In the other case, an unstamped agreement, between the two defendants, respecting the purchase of a horse, and exempt from stamp duty, as relating to the sale of goods, was admitted on behalf of the plaintiff, to show the joint liability of the defendants for certain expenses incurred in taking care of the horse; such agreement not losing its title to exemption because it was produced by a third party, as evidence of a collateral matter.

An unstamped note looked at as a test of alleged fraud in making it.

In an action for money lent, the plaintiff produced an unstamped promissory note for the amount; and the defence being, that the defendant was made drunk by the plaintiff, and received no part of the money, the jury were allowed, by Lord *Ellenborough*, to look at the note, as a contemporary writing, to prove or disprove the fraud imputed (*i*).

An unstamped guarantee admitted to show the giving of it up to be a sufficient consideration for a promise.

Haigh v. *Brooks* (*k*) was an action on a promise by the defendant to the plaintiffs, to see certain bills, accepted by third persons, paid at maturity, on the plaintiffs giving up to the defendant his guarantee, theretofore given to them, on behalf of such third persons; and to show the sufficiency of the consideration for the promise, it was necessary to prove the guarantee; but, it being unstamped, a question arose as to its admission; and, after two trials, it was, ultimately, determined by the Court, that, for the purpose for which it was produced, it required no stamp; that the case was different from *Jardine* v. *Paine* (*l*), where the unstamped paper was the very bill of exchange in respect of which the action was brought, and through which the plaintiff must have made out his title to recover.

And an unstamped promissory note for a similar purpose.

With the last case, may be mentioned that of *Gould* v. *Coombs* (*m*); where, to a promissory note of several persons, was added the signature of the widow of one of the makers; and which note, without deciding the point, whether it had become inadmissible or not, on the first count, in which it was declared upon, for want of a stamp, was held to be admissible to sustain the second count, on an account stated, to show the circumstances under which an I O U was given, and the consideration for the latter.

(*i*) *Gregory* v. *Fraser*, 3 Camp. 454. But see *Sweeting* v. *Halse*.

(*k*) 10 A. & E. 309; 3 P. & D. 452.

(*l*) Page 308, *post*.

(*m*) 9 Jurist, 494; 14 L. J. R. (N. S.) C. P. 175.

An unstamped agreement admitted to prove the contract void in law.

Although an unstamped agreement cannot be admitted to establish an obligatory contract, it may be to prove the contract void in law; as in *Coppock* v. *Bower* (*n*), where the defendant, in answer to an action of debt, pleaded an agreement for putting an end to an election petition as the consideration for the debt, and produced unstamped papers, constituting the agreement, and the Court held that such papers were admissible.

An unstamped bill received to show that it is invalid for want of a stamp.

So, an instrument, invalid for want of a stamp, may be admitted to show that fact.

In an action of debt the defendant pleaded never indebted, and payment. A settlement of accounts had taken place between the parties, on which it appeared that the defendant owed the plaintiff 1000*l.* The defendant paid 500*l.*, and gave a bill of exchange for the remainder, signing a memorandum from which these facts appeared. The bill was on an insufficient stamp; the plaintiff was, therefore, under the necessity of giving the memorandum in evidence; and, in order to rebut the inference arising therefrom, that the demand was settled, tendered the bill also, which was rejected, and the jury found that there had been a debt, but that it had been liquidated by cash and bill. On a motion for a new trial, the Court, (including the learned Judge who tried the cause,) all agreed that the bill should have been received; it was not offered to establish it, but, on the contrary, to show that it was not "good, useful, or available" (*o*).

Unstamped receipts admitted to prove over-payments.

In an action by a tenant, against his landlord, for over-payments made during a series of years, accounts, containing the sums in question, delivered to the tenant, upon each of which the word "paid" was written, either by the defendant or his steward, were received in evidence, though unstamped; the Lord Chief Baron being of opinion that such accounts, coupled with the entries of the same sums in the steward's books, as paid, were admissible to show that the plaintiff had been overcharged (*p*).

The entries in the accounts delivered to the plaintiff were receipts, clearly liable to duty, and, if stamped, were capable of being given in evidence, to prove payment of the sums specified; it seems rather a subtle distinction to say, that they might, without stamps, be admitted to show overcharges. It is difficult, indeed, to perceive how the offering of such receipts in evidence was for a

(*n*) 4 M. & W. 361; H. & H. 340.

(*o*) *Smart* v. *Nokes*, 13 L. J. R. (N. S.) C. P. 79; 7 Scott, N. R. 786; 8 Jurist, 44

(*p*) *Clarke* v. *Hougham*, 3 D. & R. 323.

purpose collateral to that of showing the payments; at all events, as the meaning of that term is interpreted by the House of Lords in *Matheson* v. *Ross*.

An unstamped part of an agreement admitted to show the agency of the party executing it.

In an action by several plaintiffs, for use and occupation, the agreement, whereby the premises were demised to the defendant, signed by him, and duly stamped, was read. The defence was, that the plaintiffs, by one of them, acting for the whole, had accepted another tenant, and released the defendant; and, in order to show the authority of the one who so acted, the other part of the agreement, signed by him only, for himself and his co-plaintiffs, was offered, but objected to for want of a stamp; Lord *Abinger*, however, was of opinion that it was admissible; it was proposed to be made use of for showing the agency; and the plaintiffs having put in the part signed by the defendant alone, he had a right to make use of the other, to show the entire contract. His Lordship did not think the point admitted of a question (*q*).

Invalid check

In a suit by executors against an attorney, to make good money misappropriated by his partner, a check, drawn more than fifteen miles distant from the bankers, given to the attorneys, by means of which the money was received by them, was objected to for want of a stamp; but the Lord Chancellor considered that, for a collateral purpose, it was admissible (*r*).

An unstamped receipt admitted to prove a collateral matter, the payment not being in question.

The case of *Matheson* v. *Ross* (*s*), in the House of Lords, on appeal from the Court of Session in Scotland, was as follows:—The respondent brought an action against the appellant for an alleged balance of an account due to him, and, on the trial, he tendered in evidence a paper containing a Dr. and Cr. account, with a balance of 68*l.* 9*s.* 4*d.* struck in favour of the plaintiff, at the bottom of which account was the following unstamped receipt, signed by the plaintiff, *viz.*:—

"I acknowledge having received from *K. M.* 68*l.* 9*s.* 4*d.* sterling, being balance of pay-bills paid from 7th Aug. to 11th Dec. both inclusive."

The payment of the balance mentioned in the receipt was admitted, and was not, therefore, in any way, in dispute; the receipt was offered, not to prove the payment of it, but as an acknowledgment of the state of the accounts at the time. The Judges of the Court below were divided in opinion as to its admissibility, but the

(*q*) *Turner* v. *Hardey*, 1 Carr. & M 16.

(*r*) *Blair* v. *Bromley*, 11 Jur. 617

(*s*) 13 Jurist, 307.

majority were against its being received. Their decision was reversed by the House of Lords.

The learned Lords, who took part in the decision, were, all, of opinion that the receipt was liable to stamp duty; that it could not be admitted to prove directly, or indirectly, the payment of money; and that it was incumbent on every Court of justice to guard the interests of the revenue, and to take care that no document, so liable, was admitted unless properly stamped; but that it was not the duty of the Courts to strain the construction of the Stamp Acts so as, without regarding the object of the legislature, to deprive parties of the means of evidence. Their Lordships, also, agreed, that the decisions were not to be reconciled; that, although professing to proceed upon one uniform and true principle, *viz.*, that an instrument chargeable with stamp duty, but not stamped, might be received in evidence for, what is termed, a collateral purpose, yet an incorrect interpretation had been in some instances put upon the expression, "collateral purpose," creating much confusion in the cases. The Lord Chancellor said, that in the case of an unstamped receipt, whether the document is produced for a direct purpose, or for a collateral purpose, but, still, where the matter collateral is to be proved by evidence of the fact of payment of money, and the payment is established by such receipt, the receipt is within the provisions of the Stamp Act, and cannot be admitted. But that an unstamped document, because it was a receipt, but purported, upon the face of it to be, also, something else, not requiring a stamp, could not be used to prove the other matter (there being no question, as to the payment, between the parties), was a proposition which it seemed to his Lordship extremely difficult to support, by any argument, or by any authority.

Lord *Brougham* observed, that when it was laid down, as in some of the cases, that where the document was used for a collateral purpose it did not require a stamp, his Lordship did not think that such expression was perfectly accurate, nor was it, always, very intelligible; because it might be for a collateral purpose, and, yet, if it was used, in any way, to mix up with it the receiving or paying of money, so that, upon the whole, a receipt of money was the matter for which, or in respect of which, or connected with which the document was used, it required, past all doubt, to have a stamp, because it was, in one way or other, used as a receipt. But that if the same document was used for a totally

different purpose, it was not to be regarded as a receipt, and that, therefore, the legislature never intended that it should bear a stamp as a condition precedent to receiving it in evidence.

Lord *Campbell* said that he had doubted much during the argument. His opinion was, that if a document, purporting to be a receipt, but unstamped, was offered in evidence, *for any purpose*, if it would be evidence, *as a receipt*, to establish any question litigated, it could not be received for a collateral purpose, merely by a party saying, "I offer it for a collateral purpose, and let it be considered and taken, *non scripta* the whole, but part of the receipt." His Lordship did not think that a part of the document could be abstracted in that manner, and the rest given in evidence. The criterion seemed to his Lordship to be, not whether the party sought to make use of it as a receipt, but whether it could be made use of, as a document, to settle any question litigated between the parties. And had the sum mentioned in the receipt in question been in dispute, he should have thought that the document could not have been received in evidence, for any collateral purpose; "for only see," his Lordship proceeds to observe, "the danger; can a jury be told, 'you are to discharge from your minds everything that applies to the receipt, it is not upon a stamp, and, therefore, it is not in evidence, but you are to look to the other part of it, and that you are to apply to another, and a collateral purpose;' I think that would be a dangerous doctrine. If the receipt in the present case had been stamped it would have been of no avail, whatever. That being the case, it comes within the rule, which, I think, is a sound rule to be laid down, upon this subject, *that it could not have been used, if stamped*, and it is not left to the party merely to say, 'I do not use it for this particular purpose.'"

This view of Lord *Campbell* seems to narrow the meaning to be given, in such cases, to the term "collateral purpose."

See page 54 as to the admission of unstamped documents for the purpose of taking cases out of the Statute of Limitations, under the exemption in Lord *Tenterden's* Act, (9 Geo. IV. c. 14, s. 8).

The unstamped agreement alluded to by the Master of the Rolls in *Hearne* v. *James* (*t*), as having been admitted because it was produced as evidence, merely, and not as obligatory, was, no doubt, dated previously to the 23 Geo. III. c. 58, when instruments under hand were not liable to stamp duty unless they were obligatory.

(*t*) Page 21, *ante*.

The following are cases in which the Court refused to admit unstamped instruments for alleged collateral purposes.

Unstamped receipts to prove payment of money for collateral purpose not admitted.

In a replevin case, a lease had been executed by the father of the defendant, at a specified rent; with abatements in certain events; which lease the plaintiff had not executed. The defendant's avowries were for the original sum, and also, for sums, deducting the abatements, and, in order to show that the plaintiff had acquiesced in the terms, and that, therefore, the defendant had a right to distrain for the rent, payable as specified in the avowries, she offered to read in evidence certain unstamped receipts for rent paid to her by the plaintiff; her counsel contending that the object was collateral to the purpose for which the receipt was given; but it was held that the direct object of producing the receipts was to prove the payment of rent, and that they could not, therefore, be received (*u*).

An unstamped bill indorsed on a cancelled bill not allowed to be read to show the first bill cancelled with consent.

On a bill of exchange becoming due another was drawn on the back of it, but not stamped, and the first was cancelled. In an action against the acceptor of the first bill, the question before the Court, on a motion was, whether the second bill could be looked at by the jury, (which had been done at the trial,) to aid them in coming to a conclusion on the question, whether the first bill had been cancelled with the drawer's consent, or not. *Reed* v. *Deere* (*x*) was referred to. The Court determined that it could not, in point of law, be done. Lord *Tenterden* observed that in *Reed* v. *Deere*, the second instrument was looked at *by the Court*, to see whether it varied the first; but, that in this case, *the jury* looked at the second instrument, and were allowed to know its contents, and to draw a conclusion of fact from it (*y*).

It, certainly, seems difficult to distinguish this case from that of *Gregory* v. *Fraser* (*z*), in which the jury were allowed to look at an unstamped promissory note, and to draw a conclusion of fact from its contents; and but for the allusion to it in the case of *Jardine* v. *Payne* (*a*), it would be submitted that the *nisi prius* case must be considered as overruled. The purpose for which the inspection was required, was as much collateral to, and independent of the document, in the one case, as the other.

An unstamped bill cannot be looked at to

The case of *Jardine* v. *Payne* was as follows. The plaintiff declared as indorsee of a bill accepted by the defendant, the decla-

(*u*) *Hawkins* v. *Warre*, 3 B & C. 690

(*x*) Page 311, *post*.

(*y*) *Sweeting* v. *Halse*, 9 B & C. 365; D. & L. 287.

(*z*) Page 303, *ante*

(*a*) 1 B. & Ad. 663.

ration containing, also, the usual money counts. The bill was on a wrong stamp, and could not be read in support of the count upon it. Letters were written by the defendant, one addressed "To the gentleman that calls with the bill," and another to the plaintiff's attorney, in answer to an application from him; these letters referred to the bill, in terms sufficient to constitute an admission of the amount of it being due from the defendant to the holder; the plaintiff, however, was unable, without referring to the indorsement, to show that he was the holder; and the Court held, that an unstamped, or an improperly stamped bill, could not be read to the jury; it might be looked at by the Court for the purpose of seeing whether it required a stamp; but with that the jury had nothing to do; it might be looked at by the jury also for a collateral object, as in *Gregory* v. *Fraser*.

show who is the holder.

Williams v. *Gerry* (*b*) was the case of an issue under the Interpleader Act, to try the validity of an assignment of goods, made prior to the seizure of them by the sheriff, under an execution. The plaintiff claimed the goods under an assignment, dated 2nd January, 1840, and, in order to rebut the charge of fraud, he offered to give in evidence a prior assignment, dated 18th October, 1839, but this, not being stamped, was rejected; and, on a motion for a new trial, the Court held that it was properly rejected. It was contended, that this was in the nature of a charge of conspiracy, and, that by reference to decided cases, the instrument in question might be given in evidence to rebut the charge. Lord *Abinger* observed, that when the purpose was to give evidence of fraud, and to defeat the instrument, and not to give it effect, it might be received, although unstamped; the cases cited for the plaintiff were decided on this principle, in which his Lordship concurred; and, in cases of usury, an unstamped agreement might be received to show a corrupt contract; but, a party charged with usury, could not give it in evidence to rebut such a charge; that would be to set it up. His Lordship would not say, that to rebut the accusation of a guilty mind, and to explain away an offence, by showing that he acted under a mistake, a party might not give an unstamped instrument in evidence, as that would not be to establish, or give effect to it. Mr. Baron *Alderson* concurred in this view; and, in the course of the argument, observed, that the statute in directing that the instrument "shall not be pleaded, or given in evidence, or in any Court, or admitted in any Court, to be

An unstamped deed not admissible to rebut a charge of fraud.

(*b*) 10 M. & W. 296; 2 Dow. N. R. 209.

good, or available, in law or equity," meant, a pleading or giving in evidence by a party to a suit; that in criminal cases, the Crown is no party; and, he asked if it could be received, where the object was, to make it beneficial, or available to the party producing it? His Lordship also observed, that in a criminal case, counsel was contending, in effect, that the declaration of a prisoner was not only available against him, but for him, which was not the fact. Mr. Baron *Rolfe* agreed that the instrument could not be received, but, he said, it would be desirable to guard themselves against laying down any general rule, especially in criminal matters; he thought that a party indicted for larceny, might give in evidence an unstamped assignment to him of the goods. So, in the case of embezzlement, if the party accused had paid away the money on unstamped notes, they would be evidence to show the mistake.

An unstamped expired lease not admitted to show the terms of a parol contract with another tenant.

In *Turner* v. *Power* (c), the plaintiff and defendant had agreed, by parol, on a tenancy, upon the terms and conditions contained in a written agreement between the plaintiff and a third person, who had been tenant of the same premises, but which instrument being insufficiently stamped, the Court refused to admit it.

The case of *O'Keefe* v. *Roche* (d), scarcely demands notice; the purpose for which the improperly stamped bills were unsuccessfully attempted to be given in evidence not being collateral.

And the subsequent case, in Ireland, of *Listowell* v. *Greene* (e), cannot be cited as an authority, notwithstanding the observation of the Lord Chief Baron. That was an action for mesne profits; and on the trial an unstamped agreement made between the parties, entitled in the ejectment cause, containing terms for discharging the arrears of rent, was admitted, not for the purpose of proving the agreement, but of showing that the defendant had notice of the ejectment, and was in possession of the land. On motion the propriety of such admission was disputed, but the point was not decided; *Brady*, C. B., observing, that had the case turned upon the admissibility, it might, probably, have been held that it was admissible for the collateral purpose for which it was offered.

Instruments looked at by the Court.

Instruments, which, for want of the necessary stamps, cannot be shown to a jury, have been sometimes looked at by the Court, for information.

An unstamped agreement looked at to

On an appeal against an order of removal, articles of agreement, under seal, which were entered into for the hire of the pauper

(c) 7 B. & C. 625. (d) *Fox* v. *Smith*, 129 (K. B. Ireland).
(e) 3 Ir. Law Rep. 205.

could not be read, not being stamped as a deed; but *Bayley*, J., suggested, that although the instrument could not be read to prove the hiring, the Court might look at it to see the duration of the contract under it, in order to guide them in receiving parol evidence of subsequent service, to which it did not apply (*f*).

see to what it did not apply.

The subsequent cases of *Vincent* v. *Cole*, and *Buxton* v. *Cornish*, have, however, undoubtedly overruled this decision.

An agreement was entered into, to refer certain causes to arbitration, which agreement was stamped; the parties afterwards met, and signed another agreement of reference, which was indorsed upon the former one. The plaintiff declared upon both agreements, the latter of which being unstamped, could not be admitted in evidence; but it was held that it might be looked at by the Court, to ascertain whether the first was altered by it; and it being found that it put an end to the first, the plaintiff could not recover on the counts setting out that agreement (*g*).

A second agreement looked at to see if it altered the first.

Vincent v. *Cole* (*h*) was an action for extra work performed by the plaintiff, as a builder, for the defendant. The plaintiff had contracted to rebuild a house for the defendant for 525*l.*, which sum had been paid; but it was stated, that besides doing this work, the plaintiff had pulled down a shed, and made certain excavations, which was charged for as extra work; these things not having been included in the contract; and it was also alleged, that the plaintiff was entitled to make certain other charges for extra work. It appeared on the examination of the plaintiff's witness, that a written contract had been signed, which was produced, and found to be unstamped. For the defendant it was insisted, that, whether certain works were within the contract, or not, could only be proved by the contract itself. *Rex* v. *Pendleton* was relied on, for the plaintiff, to show that the Court might look at the contract; but the plaintiff was nonsuited; and a rule to set aside the nonsuit was refused, Lord *Tenterden* observing, that the inconvenience of a Judge having to look at the agreement, to see if it contained items claimed, would be very great.

An agreement not to be looked at to see what it does not contain.

In an action on a promissory note, with the usual money counts, &c., the defendant pleaded a set-off, for work and labour. At the trial, it appeared, in the course of the plaintiffs' case, that the work done by the defendant was under written contracts. On

The like.

(*f*) *Rex* v. *Pendleton*, 15 East, 449.

(*g*) *Reed* v. *Deere*, 12 C. & P. 624; 7 B. & C. 261.

(*h*) 3 C. & P. 481; 1 Moo. & M. 257; D. & L. 284.

asking a witness, examined in support of the plea, respecting the work done *beyond* the contracts, the Judge said that the contracts must be produced; they were produced but were found not to be stamped, and the Judge refused to look at them, and to hear evidence, without; the plaintiffs, therefore, had a verdict. On a motion for a new trial it was contended, with reference to Mr. Justice *Bayley's* dictum in *Rex* v. *Pendleton,* that the Judge might look at the contracts, to see that what the witness spoke of was not within them, but the Court held otherwise; and that *Vincent* v. *Cole* had, completely, overruled the dictum of Mr. Justice *Bayley* (*i*).

Secondary evidence.

Executed unstamped instruments have been admitted as *Secondary Evidence* in certain cases.

Two parts prepared; one only stamped; proof of the contents admitted.

In *Garnons* v. *Swift* (*k*) two parts of an instrument had been prepared, but one only was stamped, and the party having the unstamped part, was allowed to give secondary evidence of the contents of the agreement; the other party refusing, on notice, to produce the stamped part. In this case the unstamped part was pretended to be lost, and the draft was given in evidence. On motion, Lord C. J. *Mansfield* observed, "suppose there had been only one part, might not the plaintiff, under the circumstances, have given evidence of the contents? how does it differ though there were two parts, if only one of them was stamped?"

An unstamped duplicate admitted.

In *Waller* v. *Horsefall* (*l*), Lord *Ellenborough* admitted an unstamped duplicate, as secondary evidence. Notice had been given to the defendant, to produce a stamped agreement in his possession. The plaintiff, on the non-production of it, tendered, by way of secondary evidence, another part of the agreement, unstamped, which had been executed by both parties at the same time with the former; it was objected that this was a substantive binding agreement, and could not be given in evidence without a stamp; but his Lordship observed, that the agreement in the hands of the defendant not being produced, it was open to the plaintiff to give parol evidence of its contents, or produce a copy of it; and he thought that this copy might be received as such, though, if stamped, it might have been used as an original.

An unstamped counterpart admitted.

And in *Munn* v. *Godbold* (*m*) an unstamped counterpart was held to be admissible. That was an action of covenant; two

(*i*) *Buxton* v. *Cornish*, 12 M. & W. 426.

(*k*) 1 Taunt. 507.

(*l*) 1 Camp. 502.

(*m*) 12 C. & P 97; 3 Bing. 293 11 Moore, 49.

parts of the deed were executed, one by the plaintiff, in the hands of the defendant, the other by the defendant, in the hands of the plaintiff; the latter, upon which only the defendant could be charged, was lost, and the plaintiff, by way of giving secondary evidence of it, gave the defendant notice to produce his part. On the trial the plaintiff proved the loss, and offered in evidence the draft, when the defendant produced the counterpart, but objected that it could not be read, not being stamped; and that whilst it was in Court the draft could not be read, the other being better evidence; the objection, however, was overruled, and the counterpart admitted; and a rule for a new trial was discharged. *Best*, C. J., said, "where two parts of an instrument are prepared, one of such parts is more authentic and satisfactory evidence of the contents of the other, than any other draft or copy; and the party who produces it, and against whom it is used, by taking and keeping it as a part of the deed, admits its accuracy; the Courts, therefore, if one part be lost, and another be in existence, require it to be produced, or shown to be in the hands of the other party; then, on his refusing to produce it, on notice, a copy may be received. The counterpart, in the present case, was not produced as a deed, but merely as secondary evidence of that which was lost; it could not be read as a deed, because it was not executed by the defendant; it was only used as an authenticated copy of that which he had executed; and, as a copy, it required no stamp."

Attested copy admitted.

In *Ditcher* v. *Kenrick* (*n*) an attorney, who held the deed of covenant for a third party, refused to produce it. Two parts had been prepared, and it was proved that the second part was lost, and a witness produced an attested copy of the deed on 1*s*. stamps, which was objected to as having been made for a party, and requiring, therefore, the same stamp as the deed (*o*); but it was admitted, by *Abbot*, C. J., as secondary proof.

A proved copy is not liable to duty as an attested copy.

A writing, which is proved by a witness to be a true copy of an instrument, is not such a copy as is charged with stamp duty as an attested copy; and may, therefore, be admitted, as secondary evidence, without a stamp; that duty applies to copies which are evidence *per se* (*p*). See also *Jones* v. *Randall* (*q*) where, in an action on a wager, whether a decree would be reversed, or not, on appeal, a copy of the reversal was admitted, as evidence, without being stamped.

(*n*) 1 C. & P. 161.
(*o*) See TABLE, title COPY.
(*p*) *Braithwayte* v. *Hitchcock*, 6 Jurist, 976; 10 M. & W. 494; 2 Dowl. N. R. 444.
(*q*) 6 Mod. 149, note.

In *Doe dem. Bailey* v. *Foster* (*r*), an examined copy of a Court Roll was admitted without a stamp.

Paul v. *Meek* (*s*) may, with propriety, be mentioned here, although nothing was decided by it as to the admission of secondary evidence. It was an action of debt for tolls. The plaintiff produced the counterpart of the lease, stamped with 30*s*., the proper duty; whereupon the defendant produced the lease, stamped with 35*s*., which duty, it was argued was insufficient, tolls being a hereditament, and requiring, therefore, the payment of *ad valorem* duty; and it was contended that neither the lease nor the counterpart could be read. The plaintiff was nonsuited; but the Court, on motion, without entertaining the question whether tolls were a hereditament or not, were of opinion that the counterpart was admissible as original evidence.

Original presumed to be stamped where in the hands of opposite party who refuses to produce it.

In the case of secondary evidence of an agreement in the hands of the opposite party, who refuses to produce it, after notice, such an agreement will be presumed to be stamped.

In *Crisp* v. *Anderson* (*t*) the counsel for the plaintiff proposed to give in evidence a copy of an agreement, the original having been shown to be in the hands of the defendant; it was objected, that before an unstamped copy could be read, the original must be proved to be stamped, but Lord *Ellenborough* said he should presume it to be stamped, as against a party who refused to produce it, particularly after notice.

So where lost.

So, also, where an instrument is lost.

In *Rex* v. *Long Buckby* (*u*), an indenture of apprenticeship, proved to have been lost, was, after 30 years, presumed to have been duly stamped for the premium paid, notwithstanding the proper officer proved, that it did not appear that any such indenture had been stamped with the premium stamp, or enrolled, during the whole period of 30 years, the Court considering the presumption not sufficiently rebutted by the negative evidence.

It is not to be inferred, from this case, that the Stamp Office has the means of knowing whether any particular instrument has been stamped or not. At the period referred to, indentures of apprenticeship, where a premium was paid, were brought to the Stamp Office after they were executed, in order to have the duty on the premium assessed (*x*). See also *Rex* v. *East Knoyle* and *Rex* v. *Badby* (*y*).

(*r*) 3 M. G. & S. 215.
(*s*) 2 Y. & J. 116.
(*t*) 1 Stark. 35.
(*u*) 7 East, 45.
(*x*) See page 88, *ante*
(*y*) 1 Const, 547 & 549.

In *Pooley* v. *Goodwin* (*z*) the defendant, who was an architect, and entitled to receive certain per-centage on the money expended in a certain building, gave the plaintiff, to whom he was indebted, an order to receive a portion of the money due to him; the plaintiff proved that the order had been lost, and was allowed to give secondary evidence of it, by means of an affidavit, made by the defendant, in which it was set forth; the Court presuming that it was duly stamped.

In *Hart* v. *Hart* (*a*) Vice-Chancellor *Wigram*, in reference to *Pooley* v. *Goodwin*, made the same presumption; observing, that it was manifest, that great injustice might ensue, if the presumption was not to be raised in favour of a person claiming under a lost deed.

Smith v. *Henley* (*b*) seems, however, to conflict with these decisions. That was a bill for a specific performance of an agreement to grant a lease, filed against the executors of the lessor. An agreement had been entered into, but it could not be found; the defendants were unable to state the terms, nor could the plaintiff clearly prove them; moreover, the agreement was not proved to have been stamped. The *Lord Chancellor* said, that it must be taken that the agreement was not stamped, and if it had been produced in that state it could not be read; if the contents could be proved, and reduced into writing; or, if a copy could be proved, that might be stamped. His Lordship alluded to *Bousfield* v. *Godfrey*, where a copy was stamped and admitted.

In this case no evidence whatever could be given of the agreement, and the question of stamp duty was not, therefore, properly raised. On the authority, however, of it, and referring to *Bousfield* v. *Godfrey*, Vice-Chancellor *Knight Bruce* admitted a stamped copy of a lost agreement made in 1812 (*c*). It does not appear to have been proved that the agreement was not stamped, although it seems to have been admitted that it was not so, at a particular period; it was contended that it should be presumed to have been stamped subsequently. If the Court had thought the presumption proper there would have been no necessity for the copy being stamped. The copy, however, appears to have been admitted, not under any such presumption, but because it was stamped; which is opposed to the doctrine inculcated in *Rippinier* v. *Wright*. But

(*z*) 4 A. & E. 94; 5 N. & M. 461; 1 H. & W. 567.

(*a*) 11 L. J. R. (N. S.) Chan. 9.

(*b*) 13 L. J. R. (N. S.) 221 Chancery.

(*c*) *Blair* v. *Ormond*, 11 Jur. 665; 1 De Gex & Smale, 428.

that case may be said to be somewhat qualified by *Bousfield* v. *Godfrey*.

But secondary evidence is not admitted where the agreement which is lost or refused to be produced is proved to be unstamped.

Where the instrument, which is lost or destroyed, is proved to have been unstamped, secondary evidence is not admissible. On an appeal, in a case of alleged settlement by renting a tenement, the terms of the taking were contained in an unstamped agreement, which was lost. The appellants, to prove the value of the tenement, offered parol evidence of the contents of the agreement, but the Court held that it could not be received.—*Abbott*, C. J., in reference to *Dover* v. *Maestaer* (*d*) observed, that the note was admitted on the ground that the defendant was not to be allowed to relieve himself from the consequences of a crime, by an objection to its reception; but that here, the parties sought to show the value of a tenement, by the proof of a contract entered into respecting it; the contract, therefore, was not collateral, but of the very essence of the case (*e*). See, also, *Aldridge* v. *Ewen*, *ante*, page 87.

In *Crisp* v. *Anderson* (*f*), although Lord *Ellenborough* consented to admit secondary evidence of the agreement which the opposite party refused to produce, yet, it being, then, proved that the original was not stamped, the secondary evidence was rejected. And in the recent case of *Crowther* v. *Solomons* (*g*), which was an action of trover for goods deposited on a loan, where the defendant refused to produce the delivery ticket, the counterpart, offered as secondary evidence, was rejected, it appearing that the original was not stamped. The presumption, that the original was stamped, was considered by the Court as repelled by the evidence given that it was not stamped when it was delivered.

So, the Court refused to admit secondary evidence, where strong circumstantial proof was given to show that the original instrument was not stamped (*h*).

Nor where the unstamped agreement was destroyed by the party objecting.

In *Rippinier* v. *Wright* (*i*) the plaintiff snatched an unstamped agreement from the hands of the defendant's attorney, and destroyed it; on the trial he objected to parol evidence being given of its contents, on the ground that the paper itself, if in existence, could not have been read, not being stamped; which objection prevailed; the Court, afterwards, holding that the evidence was properly rejected. It was the duty of the parties to an agreement to

(*d*) Page 300, *ante*

(*e*) *The King* v. *Castlemorton*, 3 B. & Ald. 588.

(*f*) *Ante*, page 314.

(*g*) 18 L. J R. (N. S.) C. P. 92.

(*h*) *Rose* v. *Clark*, 1 Y. & C. N. R. 531.

(*i*) 2 B. & Ald. 479.

take care that it was properly stamped; and it was one of the risks attendant upon an omission to do this, that if any accident happened to the agreement, before it was stamped, there was no remedy.

The Court remarked, that it was not possible then to say, whether, or not, the Commissioners, in the exercise of their discretion, would have permitted the agreement, if it had remained in existence, to be stamped on payment of a penalty. This portion of the judgment is noticed merely for the purpose of observing that the Commissioners do not consider that they have any such discretion, or, at least, that they ought to exercise any. Except in the case of a statutory prohibition, (which, of course, leaves no discretion,) they never refuse to affix a stamp to any instrument liable to duty; the condition, upon which the stamp is ordered to be impressed, being complied with.

Party ordered not to produce an unstamped agreement to defeat his opponent.

In this case of *Rippinier* v. *Wright*, it is clear that the party was allowed to take advantage of his own wrong; but in *Bousfield* v. *Godfrey* (*k*), the Court interfered to prevent such an act of injustice. The defendant having surreptitiously obtained possession of an original agreement between himself and the plaintiff; and having alleged that he had lost it; a Judge at Chambers made an order, that he should produce it to be stamped; and, that in default, he should deliver to the plaintiff's attorney, a copy of a copy admitted to be in his possession; and that upon such copy being produced to be read at the trial, the defendant should be precluded from producing the original. On a motion to set aside this order, the copy was produced, and handed over; and the Court ordered, that if the plaintiff, on the trial, produced the same, duly stamped, the defendant should not be permitted to produce the original. *Best*, C. J., observed, that they would not have made this order if the stamp ought to have been on the instrument at the time of execution; but that no offence was committed at that time, because the parties had twenty-one days to affix the stamp.

See page 12, *ante*, as to the admission of an instrument, the stamp upon which has been obliterated.

Where a copy is offered, the probability of the original being genuine must be shown.

Where an original note is lost, and a copy is offered in evidence, to serve a particular purpose in a cause, sufficient probability must be shown to satisfy the Court that the original was genuine, before a copy can be allowed to be proved (*l*). An authority for this was

(*k*) 5 Bing. 418. (*l*) *Goodier* v. *Lake*, 1 Atk. 446.

scarcely needed; a case is not very readily suggested which could give rise to it. How a copy could be proved without showing that an original had existed; and how the assumed original could be possibly referred to as such, without proof of its being what it purported to be, it is rather difficult to imagine.

Secondary evidence of a receipt for the penalty on stamping.

An instrument, not written on stamped paper, was, afterwards, stamped on payment of a penalty; but it was objected that there was no receipt for the penalty. Something had been written upon the instrument, but it was erased; Mr. Justice *Burrough* was of opinion, that if there was proof that there *was* a receipt, and, for any sufficient reason, it could not be produced, secondary evidence might be given of it; and he said that after such proof given he would admit the instrument (*m*).

Admissions are evidence though agreement not stamped.

The statements of a party, or his attorney, amounting to admissions, are evidence against him, although involving the contents of a written agreement, not produced, or not admissible for want of a stamp. See *Newhall* v. *Holt* (*n*), *Slatterie* v. *Pooley* (*o*), *Earle* v. *Picken* (*p*). See also *Arthur* v. *Dartch* (*q*).

Parol evidence where written instrument not admissible or not proved.

The question, how far parol evidence may be admitted, to prove matters contained in a written document, inadmissible for want of a stamp, is one of a general nature; and not to be distinguished from the like question arising upon the non-production, or non-admission of an instrument, from any other cause. No further notice, will, therefore, be taken of cases of this description, than by a reference to a few upon the general question. See *Rolliston* v. *Hibbert* (*r*), *Hiern* v. *Mill* (*s*), *Rex* v. *Holy Trinity, Kingston-upon-Hull* (*t*), *Rex* v. *Merthyr Tidvil* (*u*), *Singleton* v. *Barrett* (*x*), *Barnes* v. *Hodgson* (*y*).

(*m*) *The Apothecaries' Company* v. *Fernyhough*, 2 C. & P. 438.
(*n*) 6 M. & W. 662.
(*o*) *Ibid.* 664.
(*p*) 5 C. & P. 542.
(*q*) 9 Jurist, 118.
(*r*) 3 T. R. 406.
(*s*) 13 Vesey, 114.
(*t*) 7 B. & C. 611.
(*u*) 1 B. & Ad. 29.
(*x*) 2 C. & I. 368.
(*y*) 1 W. W. & H. 80. See also Bills and Notes, p. 134, *ante*.

IV. Instruments relating to several distinct Parties or Matters.

SCARCELY any subject, within the range of the Stamp Laws, is of so embarrassing a nature, in practice, as that which falls under the present division. The difficulty was less formidable previously to the imposition of *ad valorem* duties, and when fewer instruments were charged with specific duties, than of later years. At a time when every "indenture, lease, bond, or other deed," whatever might be its purport, or contents, was liable to the same duty, a principle was more readily laid down and applied; but the introduction of *ad valorem* duties, in reference to particular transactions, and others, of different denominations, has tended greatly to perplex the subject. It will be the business of this immediate portion of the work to distinguish the cases; first stating certain general propositions as deducible from them; thereby establishing something like a rule for the guidance and regulation of those who are called upon to exercise a judgment in such matters.

A celebrated writer on the law of evidence (*z*), says, "If the interest of the parties relates to one thing, which is the subject-matter of the instrument; or, in other words, if the instrument affects the separate interests of several, and there is a community of the same subject-matter as to all the parties, there a single stamp will be sufficient; but, where the parties have separate interests, in several subject-matters, there ought to be a separate stamp for each party." This, as a general rule, seems, as far as it goes, to be quite satisfactory; but it embraces only the least difficult part of the subject.

Classification of instruments.

In laying down the propositions alluded to, as the result of decided cases, the more convenient and practical mode will be, to adopt a classification of instruments. The following arrangement, embracing, in general terms, every description of instrument upon which any question has arisen, is submitted accordingly.

First Class.

1. An INSTRUMENT, single in its terms, but applying to several distinct matters, and operating as so many separate instruments.

The cases to which this class refers are of limited extent; they relate to legal proceedings; and are confined, chiefly, to affidavits used for several purposes, and requiring, therefore, several stamps.

(*z*) Phillips on Evidence, 445.

They are referred to, as pointing out an intelligible principle in the construction of the Stamp Acts, adopted at a somewhat early period, and applicable to other cases (*a*).

Second Class. 2. A WRITING, applying, in terms, to several distinct subject-matters, and forming separate contracts, having no connection with each other.

Instruments of this class are, unquestionably, liable to several Stamp Duties; that is, to a separate duty for every contract. But it seems to be established that the writing, if stamped in reference to any one distinct subject-matter, may be read as to that transaction; although, as regards the other contracts, it be altogether unstamped; the question in such cases being, whether the stamp appearing on the face of the writing, be intended for the particular matter; which is to be determined by its juxta-position, or some other special circumstances (*b*). The strict propriety of this practice may be questioned; but the Courts have, in this respect, followed a course which the Commissioners of Stamps have, themselves, occasionally, allowed.

Third Class. 3. An INSTRUMENT, in which several persons join, relating to one subject-matter, wherein each party possesses a several interest of his own, but one in common with the others.

A stamp is requisite, in this case, in reference only to the common purpose (*c*).

Fourth Class. 4. An INSTRUMENT containing, or relating to two or more distinct matters, between the same parties, one of such matters being, specifically, chargeable under a separate head.

Questions of Stamp Duty on instruments falling within this latter class, are not, so readily, disposed of, as those arising in respect of the writings previously mentioned. It is a settled rule, that every instrument is liable to Stamp Duty according to its leading character, and legal operation (*d*); and that if it be not so stamped, it cannot be used for any subordinate purpose, to which it may, also, relate. If, however, none of the several matters be chargeable with any specific duty, as applicable to any such particular matter, only, then the instrument will range under some general head; as, for instance, that of a deed, not otherwise, charged; and be subject to the duty there imposed, only, whatever may be the number of such separate matters; but if any matter be charged with a specific duty, exclusively applicable to it, then the question

(*a*) See page 321, *post*.
(*b*) See the cases commencing at page 323, *post*.
(*c*) Page 332, *post*.
(*d*) Page 7, *ante*.

will remain, whether the other contents be incidental or accessory, or not, to that which is so specifically charged; and if it be not, then such further duty will attach (except progressive duties, which, in no case, can be payable a second time on the same words,) as would be chargeable on a separate instrument relating to such additional matter (*e*).

A few cases are referred to which may not, perhaps, strictly, fall within the general description in any of these classes; but it has been thought proper to notice them here.

Cases relating to Instruments within the First Class.

Cases of the First class.

A principle is plainly discernible in the instance of law proceedings, where a document, liable to a specific stamp duty, was not permitted to be used in two, or more, distinct cases, or for two, or more, different purposes, not, necessarily, connected with each other, without having a stamp for each case, or purpose.

Affidavits. To hold to bail on several causes of action.

In *Crooke* v. *Davis* (*f*), an affidavit to hold the defendant to bail for 800*l.*, in an action of debt on a bond, and for 50*l.* in assumpsit, was objected to, as having only one stamp; and the Judges discharged the defendant, on common bail, in both actions, for the impropriety of joining them in the same affidavit. Although the Court decided with reference to the rules of practice, and laid little stress upon the objection as to the fraud upon the stamp duty, yet the reporter, in the subsequent case of *Gilby* v. *Lockyer* (*g*), refers to it as an authority.

To hold several persons to bail in separate actions.

The case of *Gilby* v. *Lockyer* was that of several persons held to bail, in separate actions, upon one affidavit, and which the Master certified to be in conformity with the practice; but the Court, consulting with the other Judges, said, that such a practice was without their sanction, or knowledge, and of which they disapproved; and they considered it contrary to the Act of Parliament relating to the stamp duties, and a fraud upon the revenue.

Entitled in different causes

In four causes, the affidavits were, each, entitled in all the four; but, as they had only one stamp on them, they were not permitted to be read. Three of the causes were allowed to be struck out, and the affidavits resworn in the fourth, which made them good for that cause (*h*).

(*e*) See page 337, *post*, for cases relating to this class.

(*f*) 5 Burr. 2690.

(*g*) 1 Doug. 217.

(*h*) *Anon.* 3 Taunt. 469.

The same objection was again allowed in subsequent cases (*i*).

In several prosecutions against the same person.

In *The King* v. *Carlile* (*k*), the defendant was charged on several indictments, and informations, for printing and publishing blasphemous libels; he was brought up to plead, when he obtained time: and, on being again brought up, he tendered an affidavit, relating to all such cases, for the purpose of founding a motion thereon; but, it having only one stamp, the Court refused to hear it, requiring that it should have as many stamps as there were cases to which it referred.

To found several rules.

But in *The King* v. *Muller* (*l*), an affidavit, with one stamp, was sufficient to found several different rules.

Used before a Judge, and in Court.

On a motion to stay proceedings, on the ground that the action had been brought without the knowledge of the plaintiff, affidavits were attempted to be read that had been used on a similar application to a Judge, at chambers, but who directed the motion to be made in Court; the affidavits had been resworn for the purpose, but not re-stamped. It was objected, that the affidavits had fulfilled the object for which they were intended; and that, therefore, a new stamp was requisite on each; no perjury could be assigned on them, as there was no stamp to the new jurat. The Court held the objection to be good, and refused to admit the affidavits (*m*).

The latter case is distinguishable from the previous ones. It was governed by the principle upon which altered instruments become liable to fresh stamps, *viz.*: that they are new documents; those which were first written having performed their office, or been put an end to; and it, perhaps, more properly ranges with instruments of that description.

Petition entitled in several matters in bankruptcy.

A petition was presented by partners, who were joint creditors of three persons, against each of whom a separate commission of bankrupt was issued, for leave to prove under such separate commissions; the Lord Chancellor suggested a doubt, with regard to the Stamp Laws. The decision was made without reference to the stamp duties; but his Lordship, afterwards, said, that the Stamp Office were, decidedly, of opinion that the petition required three stamps (*n*).

An anonymous case in *Lofft* (*o*) should, however, be referred to;

(*i*) *Worley* v. *Ryland*, and *Worley* v. *Oliver*, 8 Moore, 238.
(*k*) 1 Chitty, 451.
(*l*) 2 Chitty, 14.
(*m*) *Chitty* v. *Bishop*, 4 Moore, 413.
(*n*) *Ex parte Wilson*, 18 Ves. J. 439.
(*o*) Page 155.

which is reported as follows, *viz.*: It was questioned, where there is one plaintiff and several defendants, and eight different debts assigned, on affidavit, whether the stamps be necessary to all eight, severally, with a penalty on each, for omission Lord *Mansfield* said, "I will not, without authority, suffer the constant practice of the Court for thirty years to be broken through; and not of this Court only, but the Master tells me of the Common Pleas, especially where the expense to suitors would be so enormously increased."

Cases relating to Instruments within the Second Class.

Second class.

The foregoing cases, (with the exception perhaps of *Chitty* v. *Bishop*,) are those of a single document applying to several distinct matters; and, therefore, operating as several documents; and, consequently, liable, (where so held,) to as many separate duties. There are other cases of one paper writing, containing also, within itself, separate, and distinct contracts, or subjects; and chargeable, likewise, with a duty for each; but which has, in some instances, been stamped only for some, or one of such contracts, or subjects; and allowed to be read for any of such particular matters, where the stamp could be considered as referring to it. These are cases within the second class.

Warrant of attorney and bond.

A warrant of attorney to confess judgment was written upon paper which contained, likewise, a bond; judgment was entered up on the warrant of attorney, which it was moved to set aside, for want of two stamps. The Court observed, that there might be reason for refusing such a warrant of attorney in evidence, but none for making all void; for that there was nothing in the Act importing it (*p*).

Several admissions into a corporation.

Rex v. *Reeks* (*q*), was an instance of several distinct instruments, written, separately, on the same piece of parchment. Upon a trial at bar in that case, on an information in the nature of a *quo warranto*, the admission of the defendant into a corporation was produced; and, on the same piece of parchment, were the admissions of four other members, with only one stamp; but, annexed to it, were four other pieces of stamped parchment. The Court held that this would not make it good; that the proper way would be to have four new stamps, paying four penalties, as in *The Bishop of Chester's case* (*r*); and for want of this there was a verdict against

(*p*) *Anonymous*, Salk. 612. (*q*) 2 Stra. 706.
(*r*) 2 Stra. 524.

all the five parties. On the following day, a new trial was moved for; but the Court would hear nothing of it, unless the admission was produced stamped, and the penalty paid. In this case, the stamp on the parchment could not, it is presumed, be appropriated to the defendant's admission.

Several affidavits.

In *Atkins* v. *Reynolds* (*s*), an objection was allowed to affidavits being read, there being several affidavits on the same paper, with only one stamp.

Two wagers on the same paper.

Two persons, by agreement in writing, laid a wager; and, by a memorandum indorsed, agreed to double the bet; it was held that a stamp was necessary for each. In this case, the first agreement was stamped, and the plaintiff recovered upon it; the Court looking at the second, (although it could not be given in evidence,) to see that it did not supersede the first (*t*).

The like.

A wager was written upon a piece of paper, whereon had previously been written a former wager, between the same parties, which had been decided; the paper bore one stamp, which had been affixed for the purpose of the action on the second wager. It was objected that the stamp must be considered as applicable to the first bet in order of time. But the Court held, that no action having been brought on the other wager, the stamp must be taken to have been impressed with reference to that which formed the subject of the present action (*u*).

Agreement on arbitration bond.

A memorandum, on the fly-leaf of an arbitration bond, that the parties had met and proceeded, by consent, on the arbitration, after the period limited for making the award, was held to be liable to stamp duty, as an agreement to substitute one period for another (*x*). This case was open to the same point as the next.

Extension of time for completing contract indorsed.

A contract was entered into for the sale of leasehold premises and certain furniture, possession to be given at a stipulated period. By indorsement, the parties agreed to postpone the completion for a few days; this indorsement was held to be a separate agreement; but whether it was liable to stamp duty, depended upon the question, (which was not decided), whether it was of the value of 20*l.* or not (*y*).

See the cases of promissory notes with memorandums controlling the same indorsed thereon, page 157, *ante*.

(*s*) 2 Chitty, 14.

(*t*) *Robson* v. *Hall*, Peake, 128.

(*u*) *Evans* v. *Pratt*, 3 M. & G. 759; 1 Dow. N. R. 505; 4 Scott, N R. 378.

(*x*) *Stephens* v. *Lowe*, 2 Moore & Scott, 44.

(*y*) *Bacon* v. *Simpson*, 3 M. & W. 78.

Contracts of sale, in one writing, with different persons.

An agreement, whereby the plaintiff agreed with the defendant, and eight other persons, for the purchase of their several growths of hops, was signed by the sellers; opposite to whose respective names was set the quantity of acres purchased of each; two of the names were erased, and there were seven stamps impressed, one opposite to the defendant's name. It was objected that there should have been nine stamps; but it was deemed sufficiently stamped. If there was anything in the objection, the Court held that it lay on the defendant, it being a matter of fact, to prove whether the names were on it at a particular time, or not (*z*).

This case did not involve any question as to the alteration of an instrument.

Several leases in one writing.

In the case *Doe dem. Copley* v. *Day* (*a*), an instrument was given in evidence, dated 6th August, 1805, made between Sir *Lionel Copley*, and his several tenants whose names were thereunto subjoined; whereby Sir *Lionel* agreed to let, to such tenants, respectively, for one year, and so from year to year, till six months' notice given by either party, certain estates, at the rent set against such respective tenants' names, the same being a several lease to each tenant. Opposite to the defendant's name was a stamp, appropriate to a lease to him; and, on the back, the usual Stamp Office receipt for the penalty and duty, dated just before the trial. It was objected, that as the instrument contained distinct contracts, it ought to have so many distinct stamps; and that the stamp upon it might be said to apply to other tenants, as well as the defendant. The lease was admitted, but the point was reserved. The Court, on motion, considered that there were sufficient circumstances in the case, besides the juxta-position, to show that the stamp was intended to apply to the defendant; but that juxta-position is sufficient, in many instances, to connect one writing, &c, with another; and the Commissioners of Stamps, having, in their discretion, affixed the stamp, the instrument was properly admitted. Lord *Ellenborough* observed, that he should, had he been a Commissioner of Stamps, have hesitated to apply a single stamp in such a case, and expressed his wish that the attempt to obtain the stamp, in this instance, had failed.

Contract by several tenants.

After an expired tenancy and possession given up, the tenants signed a writing as follows, *viz.*: "Sir, allow us back into the possession of the land lately held by us, under Mr. *C.*, and we will

(*z*) *Waddington* v. *Francis*, 5 Esp. 182.
(*a*) 13 East, 241.

consider ourselves monthly tenants, and will yield up possession on getting a month's notice." It seems that the paper was offered in evidence for some collateral purpose; and there being nothing on the face of it to show that it was not a joint agreement, and no evidence being offered to prove that it was otherwise, the Court (Common Pleas in Ireland), on motion, could not hold that it required more than a single stamp (*b*). This is, of course, a negative decision in favour of several duties in the case of several tenancies.

By several tradesmen.

Specification.

A builder contracted, by one instrument, with several persons, masons, carpenters, &c., for the performance by them, respectively, of certain work, the particulars of which were contained in a specification referred to, but not annexed, each party's work being separately set forth, the specification concluding with a provision applicable to all. The agreement, only, was stamped, but, with what duty, is not stated. In an action, by one of the contracting parties against the builder, it was, on the trial, objected, that the agreement and the specification constituted one entire contract, exceeding thirty folios, and that, as the stamp was not sufficient for such an instrument, it ought not to be admitted. The objection was allowed, and the plaintiff was nonsuited. A rule for a new trial was granted by Mr. Justice *Coleridge*, sitting in the Bail Court (*c*). It is somewhat difficult to understand the argument on either side, on the motion, or the grounds of the judgment, as reported. The drift of the argument for the plaintiff would seem to be, that the contract was entire; and that both the agreement and the specification must be taken together, as forming one document chargeable with duty, and the whole contents reckoned in computing the duty; that one duty, only, attached, and not one in reference to the contract with each party. The argument for the defendant appears to be, that the contract with each person was distinct, and that reckoning the agreement, and those portions of the specification which applied to the plaintiff, the stamp was sufficient; or, else, that the specification, being separate from the agreement, and not annexed to it, must not be reckoned, at all, or must be treated as a document chargeable under a distinct head (*d*), and that the objection to a want of such latter stamp not having been taken at the trial, could not now be urged. The learned Judge appeared to have concurred in this view, and granted a new

(*b*) Lessee *Cooper* v. *Flynn*, 3 Ir. L. R 473.

(*c*) *Briggs* v. *Peel*, 11 Jur. 611.

(*d*) That of "SCHEDULE," in the 55 Geo. III. c. 184.

trial, observing that the terms of the Act were clear; that several parties might contract on the same piece of paper, but that the specification, in consequence of the general provision at the end, was open to doubt. This view was, doubtless, the correct one. The paper contained a separate contract with each person; one contracting party had nothing to do with the other's agreement, and the stamp would be considered applicable to him who first produced it. The specification was chargeable with a separate duty under the head "SCHEDULE," in the Stamp Act.

Conveyance by tenants in common.

With cases of this class should be mentioned that of *The Queen* v. *Eton College* (*e*), recently decided, relating to tenants in common concurring in conveying the entirety of the estate. The case alluded to was that of several copyholders, who joined in one surrender to a purchaser, the question arising on the admittance of the latter. The Court held that as each tenant in common had a separate estate, there must be a separate stamp, for each, on the admittance. The principle of this case is of general application; although it is not easy to perceive how, in practice, the particular point, as to tenants in common, can, very well, arise, except in reference to the conveyance of copyhold property. It cannot happen on a sale of any other property, because the *ad valorem* duty is charged, expressly, on the aggregate amount of purchase-money; and, for that reason, no question arose on the Surrender, which was the instrument liable to such duty. Should tenants in common, for any purpose except that of a sale, concur, in one instrument, for effecting an object, such instrument, unless the circumstances of the case be such as to allow of its ranging with those of the third class, must have a stamp for each person's separate estate.

Sale by auction. Two agreements on one copy of conditions.

Certain quantities of growing timber were sold, by auction, in two lots; on the back of the conditions of sale, the highest bidder for one of the lots signed an agreement to become the purchaser; and underneath was written, and signed by another person, an agreement for the purchase of the other lot. On that part of the paper where the first was written was impressed an agreement stamp; and, below both of them, a receipt for a penalty, "for marking the above agreement with a 16*s*. stamp," was written, and signed by the officer. It was objected, that as these were two agreements, there should be two stamps, but it was held that the

(*e*) Page 213, *ante*

stamp must be taken to belong to the agreement upon which it was impressed (*f*).

The same party purchaser of several lots.

At a sale by auction of several lots, under an Inclosure Act, the defendant, in *James* v. *Shore* (*g*), became the purchaser of lot 9, at 550*l.*, and of lot 10, at 550*l.*, and his name was entered by the auctioneer, as the purchaser of these two lots, upon the printed particulars, which were stamped with an agreement stamp on payment of a penalty. One objection was to the sufficiency of the stamp, but another to the declaration; which stated a contract for two lots; whereas the contracts were distinct. Lord *Ellenborough* held the variance to be fatal, as, in point of law, and of fact, the contracts were separate. The decision, of course, controlled the question of stamp duty.

The same point, of different contracts, arose in *Roots* v. *Lord Dormer* (*h*), which was the case of a sale by auction of growing crops, at which four lots were separately knocked down to the plaintiff, each at a sum under 20*l.*, but, in the aggregate, exceeding that amount. An agreement was signed, at the foot of the conditions, by all the purchasers, whereby they consented and agreed to become the purchasers of the lots set against their names respectively, and it was held that there was a separate agreement for each lot, and that no stamp was, therefore, necessary.

Memorandum on deed.

On an annuity deed a memorandum was indorsed, signed by both parties, but bearing date subsequent to the deed, stating, that at the time of the execution of the deed it was agreed between the parties, that the grantor should be at liberty to redeem the annuity on giving six months' notice; it was held to require a separate stamp (*i*).

A second form of instrument on paper stamped for one only.

The case of a second form of instrument written on paper stamped for one instrument, only, may here be mentioned.

This case has frequently arisen:—A form of instrument, intended to be perfected, has been written upon a stamp applicable to it, but, owing to some error, or to the transaction to which it related having gone off, the instrument, so written, is not executed, and another, totally distinct, instrument, has been written upon another part of the same paper, generally on the back of the stamp, and the question has been put—Is such second instrument duly stamped?

(*f*) *Powell* v. *Edmunds*, 12 East, 6
(*g*) 1 Stark. 426.
(*h*) 4 B. & Ad 77, 1 N. & M 667.
(*i*) *Schumann* v. *Weatherhead*, 1 East, 537.

The cases relating to altered instruments go but little way towards determining the point; they may be referred to for the purpose of ascertaining the principle upon which a second stamp is required when a writing, between the same parties, is altered, after it is signed; but this will not dispose of the present question, which may be rather assimilated to that of several distinct contracts with one stamp, only, where, if the juxtaposition affords no criterion, the first occupation of the stamp determines the point.

A case arose, some time since, in the Court of Session, in Scotland, in which it was held, that an instrument written on paper, with one stamp, on which there had been before written an instrument, not executed, was sufficiently stamped. With all the respect, however, due to the very learned persons by whom it was determined, that case may be considered as of doubtful authority, seeing that it was brought before the Court, not adversely, but with reference to a particular interest, arising out of a very peculiar state of circumstances. The case, as reported, is as follows, *viz.*:—

Mr. *Longmore*, W. S. accepted an offer made on behalf of Mr. *Lindsay*, trustee on the sequestrated estates of the Marquis of *Huntley*, of ten shares of the North of Scotland Insurance Company, at the price of 1*l.* 9*s.* per share, conform to his letter of acceptance.

Mr. *Lindsay* had in his possession, as trustee of the Marquis, a number of sheets of stamped paper, on which, several years before, leases had been engrossed, but never executed. The assignation of the ten shares of the company, sold to Mr. *Longmore*, was written upon one of those sheets of paper. It was written under the lease, and the testing clause bore, that all the words of the lease were to be held as erased. The stamp was of sufficient value. The assignation being tendered to Mr *Longmore*, and the price of the shares demanded, he presented a note of suspension of a threatened charge, on the ground that the assignation being written on stamped paper on which another deed had been engrossed, although not executed, was a violation of the Stamp Laws, in respect of which the suspender could not legally or validly either assign the shares, or uplift and discharge the dividends falling due thereon; and that the stamp was a spoiled stamp, and should have been exchanged within six months, which remedy alone was open to the respondent.

This was the form of proceeding in which the point was brought by the trustee before the Court, with the view to make available

the other stamps (of large amount) held by him, which were in the same condition, in the event of a decision in his favour.

The Lord Ordinary pronounced the following interlocutor, which was adhered to, on appeal to the Inner House, the Commissioners of Stamps and Taxes not thinking it proper to interfere, *viz.*: "In respect that the stamped paper on which the assignation is written bears a stamp duty of a sufficient amount, and that no other deed appears ever to have been executed on the said paper, and that all the words written thereon, other than those composing the assignation, are held as erased, and also in respect no caution is offered, refuses the note" (*k*).

After the case had been argued before the Inner Court, the particulars were, courteously, intimated to the Commissioners of Stamps and Taxes, who left the matter in the hands of their Lordships; which circumstance, probably, tended to inculcate a notion that the Commissioners did not dissent from the interlocutor.

It may be here remarked that no precautions by the parties to the instrument could affect the question of irregularity, and, therefore, the words inserted in the testing clause ought not to be permitted to influence it, any further than by showing, that when the second instrument was written, it was intended to appropriate to it the stamp which had been already, purposely, occupied by another writing.

All the enactments contained in the statutes from the time of William and Mary, not superseded by subsequent ones, are to be considered as incorporated in the Acts imposing existing duties, not only by reason of the clauses to be found in such Acts expressly keeping the former provisions on foot, but of the rule pursued in construing statutes passed *in pari materiâ;* at all events, for the purpose of ascertaining a principle or policy of the Stamp Laws, with the view to a decision on a fundamental question, regard must be had to the early provisions made for securing the duties, and for affording relief.

Stamp duties are imposed for and in respect of the instruments, matters, and things specified, on the vellum, parchment, or paper upon which the same are written, which vellum, &c., is required to be stamped before any of such matters and things are written thereon, and a penalty (originally 500*l.* afterwards reduced to 5*l.*) is imposed upon any person who shall infringe this regulation, besides serious disabilities in the case of an officer or attorney;

(*k*) *Longmore v. Lindsay*, 17 Scottish Jurist, 566

although, for the sake of innocent parties, permission is given to stamp the instrument, after it is written, on payment of another penalty. It is, also, provided, in order to prevent frauds, (1 Anne, stat. 2, c. 22,) that all such matters and things shall be written in such manner, that some part thereof shall be *either upon, or, as near as conveniently may be* to the stamps. And further, (12 Anne, stat. 2, c. 9,) it is declared, that where any more than one such matter shall be written on one piece of vellum, &c., the duty shall be charged upon each.

Thus it will be perceived how anxiously the legislature has endeavoured to provide against any possibility, it might almost be said, of applying a stamp to a matter for which it was not, originally, intended. When any writing is first put upon, or near to the stamp to which it is designed to have reference, the stamp immediately becomes appropriated, or occupied; and although such writing, before it becomes a perfect instrument, may be altered without affecting the stamp, such stamp cannot be transferred by appropriating it to another, and totally different instrument, whether by erasing the former, or placing near to it the other writing. What may amount to an appropriation may, perhaps, in some cases, be a question involving a difficulty. A mode of relief is provided, by law, where the beneficial use of the stamp is lost by the first appropriation, by an allowance of it as a spoiled stamp; and this, the only legitimate means, should be had recourse to, by way of indemnity, against an accidental loss.

It is known to be a practice in Scotland with some, possibly all professional men, to write an instrument on a different side of the paper from that on which the stamp is impressed. This is, certainly, a very improper course, and leaves a door open to great frauds. Is it a compliance with the statute requiring the writing to be upon, or as near as conveniently may be to the stamp? It may be said, literally, in some cases, to be so, but surely not according to the intention of the Act. Suppose an instrument, of a temporary character, to be written on the back of a stamp, and after it has served its purpose, or even before, another to be written *on* the stamp, to which instrument would the stamp, *primâ facie*, be considered as applying? and, indeed, it might be asked to which, if to either, would it, in point of law, on proof of the facts, be held to apply. Suppose another case.—A deed, consisting of several skins of parchment, is executed, but is afterwards discovered to require an additional stamp, which cannot be impressed without payment of a penalty, and the attorney procures a stamp to be

put on the back of one of the skins, as for another instrument (a very common case) to be indorsed thereon, but indorses no instrument, or no complete instrument; would such stamp be held to apply to the only instrument engrossed on the parchment? It may be said that this and similar cases would be fraudulent, and afford, therefore, no argument against the legality of a practice where no fraud is intended. To this it may be replied, that the statutes contemplate attempts at fraud, and to guard, as much as possible, against fraud, have prohibited, altogether, a course which may lead to it. The practice alluded to, as well as that of striking out any writing or printing, although only a form to be filled up, but to which the stamp was, originally, intended to refer, and writing another form of instrument on the same, or on the other side of the paper, cannot be too much discouraged. The expedient of supplying, in this way, the omission to procure the allowance is, to say the least of it, a dangerous one, and by no means to be recommended.

Cases relating to Instruments within the Third Class.

Third class.

The last-mentioned cases (*k*) are a consistent class; perfectly intelligible in the principle which they involve; and respecting which, it will, probably, be said, that no difference of opinion ought to have arisen with regard to the stamp duties to which they were liable. The next are somewhat the converse of them.

Different persons, each possessing a several interest of his own in the subject-matter, but one in common with the rest, join together in one instrument, for one general purpose. Such instrument, being single in its object, is considered as subject to one duty only.

Assignment of prize-money by crew.

The crew of a privateer joined in a bill of sale of their prize-money, and one stamp, only, was considered sufficient (*l*). This case is printed as a note to that of *Davis* v. *Williams*, from Mr. *Burrough's* note of it.

Bond by several musicians.

In an action of debt, on bond, it appeared that the defendant, and several other persons, musicians, entered into a bond to the plaintiff, as Vice-President of the Bath Harmonic Society, by which they became severally bound in the penalty of 100*l.*; conditioned to attend, regularly, the meetings of the Society, and perform, &c. One stamp only was on the bond, which, as it was

(*k*) Not including *Longmore* v. *Lindsay*.
(*l*) *Baker* v. *Jardine*, 13 East, 235, note.

several, as to each obligor, should, it was insisted, have had several stamps. But the Court was of opinion that one stamp was sufficient; as in many other cases, of which that of a composition with creditors was an instance, where the covenant was several as to each, but yet no more than one stamp was required. That, in the present case, it was one transaction; it was not intended that one should be bound, unless all were bound; the engagement never would have been made with one, that he should perform singly; but the binding of all was the consideration of the obligation of each. Sir *Jas. Mansfield*, (who delivered the judgment,) added, that it did not follow, that persons might defraud the revenue, by putting several bonds into one instrument, with one stamp; that would be a fraud; here there was no fraud (*m*).

Fraud.

It may here be observed, that in every instance where one stamp is held sufficient, the total absence of fraud is, as a matter of course, presumed; if the case be, in the slightest degree, tinctured with fraud, the instrument cannot be admitted. See *Boase* v. *Jackson* (*n*).

Agreement to subscribe to make a wet dock.

Davis v. *Williams* (*o*) was the case of an agreement, by several persons, to subscribe different sums, for the purpose of making a wet dock, at Bristol, commencing thus: "We, whose names are hereunto set, agree to subscribe the sums against our names," &c.; and which was held to be liable to stamp duty as a single instrument, although operating separately as to each person.

Agreement by underwriters.

All the underwriters on a sea policy agreed, by one instrument, having only one stamp, to refer the question in dispute between them and the insured, to arbitration. *Gibbs*, C. J., who gave judgment, observed, that it was impossible to decide that more than one stamp was necessary, without disturbing the principle which had always been acted upon, in all the Courts. He referred to the case of a composition between an insolvent and his creditors; where, although the creditors have not a joint interest thoughout, there is a subject-matter in which they have all a common interest. In *Baker* v. *Jardine* there was a community of interest, amongst the mariners, in what was to produce the fund, although they must have sued separately. In *Davis* v. *Williams*, though the parties might acquire separate interests, or subject themselves to separate obligations, yet there was but one fund, the subject-matter of the agreement. In the present case all have a community of interest

(*m*) *Bowen* v. *Ashley*, 1 N. R. 274. (*n*) 3 B. & B. 185.
(*o*) 13 East, 232.

in the matter insured; all have an interest in its preservation; and none would be answerable, so long as it remained secure; each is only answerable for his own subscription in a Court of law, but all are equally interested in the subject-matter (*o*).

Power of attorney by a mutual insurance club.

A power of attorney was executed by all the members of a mutual insurance club, appointing attorneys to execute policies on the ships admitted into the club; by virtue of which, they signed each policy with the names of all the members of the club, except that of the owner of the ship insured; the sum underwritten by each member being regulated by the value of his own ship. One stamp was sufficient; there was a community of purpose actuating all the members, *viz.*, that each should be insured by all the others; and although it might, perhaps, be said, that there was not an entire community of interest, yet there was not sufficient, in the opinion of the Court, to make several stamps necessary (*p*).

Agreement to defend actions.

An agreement was signed by nearly 200 inhabitants of a township, whereby they appointed a committee to defend any suit to be brought against any of them, by the owners of the Wakefield Soke Mills, for having in his possession a mill for grinding corn, or corn not ground at the Soke Mills; and whereby they agreed to pay their respective shares of all costs, &c., incurred, rateably, and proportionally, according to the amounts set opposite their names. The agreement was stamped with 20*s.*, and it does not appear to have been disputed that it was liable only to one stamp; the *amount* of the duty seems to have been the question; *viz.*, whether it should not have been 35*s.*, the quantity of words amounting to more than fifteen folios. It was contended that the stamp was sufficient; as, down to the defendant's name, there was less than that quantity; but, as the proportion to be paid by each person could not be ascertained but by reading the whole, the document was held to be insufficiently stamped (*q*).

Contract by a party alone, and for himself and others

A person was interested, alone, in certain goods shipped on board the *James Scott;* and, in certain others, as a partner with other persons; the goods were transhipped to the *Mountaineer*, and the *Sesostris*, the freight by which ships was less than that by the former; and the difference being claimed by the shipper, the person, so interested, wrote and signed the following paper, stamped as an agreement, *viz.*:—

(*o*) *Goodson* v *Forbes*, 1 Marsh 525.

(*p*) *Allen* v. *Morrison*, 8 B. & C. 565; 3 M. & R. 71.

(*q*) *Linley* v. *Clarkson*, 1 Cro. & M. 436.

"Mr. *W. E.* I hereby engage to pay you the difference in amount of freight between the *Mountaineer* and the *James Scott*, when the same shall have been ascertained.—I am, &c.,

"*R. & R. Thornton and West.*"

It was contended, that it bound the party, alone, in respect of his separate transaction, and also him and his partners; and, therefore, should have had two stamps; but the Court held, that, although it bound all parties, it was only one agreement, and that one stamp was sufficient (*r*).

Indemnity by several persons, limited as to each.

The following agreement was stamped with 20*s.*:—

"We the undersigned, *R. D.*, *W. G.*, and *G. G.*, severally, and respectively, undertake, in consideration of Messrs. *R. & L.* discharging, or agreeing to discharge, a certain debt due from *W. D.* to *J. S.*, amounting to 200*l.*, with the costs thereupon, to indemnify the said *R. & L.* from any loss which they may sustain, or incur, to the extent of 50*l.* from each of us; to be paid by us severally, together with a fourth part of the costs and expenses, at such time or times as the said *R. & L.* may be called upon to pay the said debts and costs; to be rateably proportioned; and, in the mean time, to make and execute such bills, &c., severally, as may be required." This was held to be one transaction, requiring only one stamp (*s*).

Release to the crew of a ship.

On the trial of an action against the owner of a vessel, for running down the plaintiff's ship, the defendant called the master of his vessel, handing in a release to him, which was, also, a release to others of the crew; it had only one stamp, and Lord *Ellenborough* doubted whether it was sufficient or not; he thought that, perhaps, as the crew, if liable at all, were guilty of a joint tort, a joint release was sufficient, with one stamp, but he admitted it as a release to the master, who was first named, and to whom it was first tendered (*t*).

Release to joint acceptors.

On an indictment for forging the names of two joint acceptors, a joint release, with one stamp, was held by Mr. Justice *Littledale* sufficient. A release to one would have enured to both (*u*).

To several witnesses.

In *Spicer* v. *Burgess* (*x*), a release to a witness was altered, by adding another witness, before the deed was delivered; it was held, on motion, that the matter was *in fieri*, and that the alter-

(*r*) *Shipton* v. *Thornton*, 9 A. & E. 314; W. W. & H. 710.

(*s*) *Ramsbottom* v. *Davis*, *Same* v. *Gosden*, 4 M. & W. 584; 7 Dowl. 173; H. & H. 464.

(*t*) *Perry* v. *Bouchier*, 4 Camp. 80.

(*u*) *Rex* v. *Bayley*, 1 C. & P. 435.

(*x*) 1 C. M. & R. 129; 2 Dow. 719; 4 Tyr. 598.

ation might be made without vitiating the instrument; Lord *Lyndhurst* observing, that it was a matter of question, whether two persons could be released with one stamp, but that that objection was not taken at the trial.

Release by next of kin.

On the trial of an action of trespass, a question arose, whether certain goods were those of a deceased person, or not; and one of the next of kin being called as a witness, a release from her, and others, next of kin, to the personal representatives, was put in; this deed bore one stamp of 35*s.*, and it was objected that it should be stamped for each party; but the Lord Chief Justice admitted it. On a motion for a new trial, the Court, holding that no release was necessary, said "We do not say that this opinion was not right, though possibly we may have thought it fit to receive further consideration" (*y*).

Had this case received further consideration there can be little doubt as to the result. The next of kin of a deceased intestate, have, surely, no less a community of interest than the underwriters on a policy; the creditors of an insolvent; the subscribers to a fund for executing a public work; or the crew of a privateer.

Release by Commoners.

In an action of trespass, the question was, whether the land was the property of the plaintiff, or belonged to the defendant, as part of the waste of the manor. For the defendant, some of the Commoners were called, to whom it was objected that they were interested; a release was tendered, executed by several Commoners, releasing to the defendant, their respective rights of common over The *locus in quo;* to which instrument there was one stamp only; but it was admitted by Mr. Justice *Coleridge*, who observed, "The estate discharged is *one*, though the interest of each might be several; when there is one common fund, one release [one stamp] is enough" (*z*).

Grant of two annuities to different persons.

Two persons covenanted to pay to *T. L.* and *A. B.*, their executors, &c., one annuity, or yearly sum of 30*l.*, in the shares and proportions following, *viz.*, 15*l.* to *T. L.* and 15*l.* to *A. B.* A question was, whether the annuity was a joint interest in these parties. It was contended, for the plaintiff, that the interest was several; and, in the course of the argument, *Parke*, B., observed, that if the principle then contended for was correct, it was a grant of two annuities, and the objection should have been taken at the trial, that the deed was not stamped with two stamps (*a*).

(*y*) *Thomas* v. *Bird*, 9 M. & W. 68; 1 Dowl. N. R. 906.

(*z*) *Carpenter* v. *Buller*, 2 Moo. & Rob. 298.

(*a*) *Lane* v. *Drinkwater*, 5 Tyr. 40.

A promissory note, "I promise to pay," &c., signed by two persons, Mr. Justice *Bayley* thought might be considered as a joint and several note; he observed, that if it was part of the arrangement, that the second person should sign the note, he might do so at any time, but if it was not so, but an after-thought, it would require an additional stamp (*b*). Note of hand by several.

The same opinion was expressed in the case of *Ex parte White, in re Johnson* (*c*), in the Court of Review; where the question was, whether the bankrupt, one of nine persons who had given a joint and several promissory note, had signed the note in performance of a promise to do so made before it was signed by the others. The like.

Cases relating to Instruments within the Fourth Class.

The remaining cases are those of an instrument containing, or relating to a matter, in addition to that which forms the leading character of it; the point being, whether the one matter is incidental, or whether it is collateral, to the other. These, in particular, are the cases before alluded to, as so difficult to deal with in practice. Fourth class.

One of the earliest cases upon the point is that of *Jones dem. Rayner* v. *Sandys* (*d*); where it was contended, that a bond, in the condition whereof was a mortgage demise, should have double stamps. At this period the duties were charged, "for every indenture, lease, bond, or other deed;" and, by the 12 Anne, stat. 2, c. 9, s. 24, it was provided, that where any more than one of any of the matters or things thereby charged with any stamp duty, should be written upon one piece of parchment, &c., the duties should be charged upon every one of such matters and things. The Court thought the Act ambiguous, and that the safest course was to follow a long series of construction. This was one bond, of which there was one execution. A feoffment, with a warrant for livery of seisin; a bargain and sale operating as a covenant to stand seised; or, (being enrolled,) as a lease and release; a demise and redemise; a mortgage with a covenant to pay the money; were constantly thought to be singly charged, only; and the practice had been consonant. A different construction would make great confusion in purchase deeds, and settlements, often relating to freehold, leasehold, and

(*b*) *Clark* v. *Blackstock*, Holt, 474. (*c*) 2 Dea. & C. 234.
(*d*) Barnes's Notes, 463.

copyhold property. Every copyhold surrender, and every admission, seemed to be charged separate, and yet one stamp of 2*s.* 3*d.* had been held sufficient for both surrender and admission, and so was the practice. The subject's property, as well as the King's revenue, was to be protected. "If the deed be not void, it is the same thing as void; for the Commissioners may, (tempted by a large sum of money,) order a stamp to be added; yet they are not obliged to do so." The proper time for objecting, the Court added, in reference to a question upon the point, was when the bond was offered in evidence.

The idea of the Court, expressed as quoted, suggests an arbitrary power in the Commissioners, which they never assumed.

Warrant of attorney with release of errors.

Previously to the consolidation Act of 1804, a warrant of attorney for confessing judgment was charged with duty as an ordinary deed, under the general description of "indenture lease bond or other deed;" and until the general Stamp Act of 1808, it was still charged with the same duty as a deed. By the 37 Geo. III. c. 111, an additional duty of 10*s.* was imposed on "every deed," with an exception of bonds and letters of attorney, and a question arose whether or not a warrant of attorney, containing a power to release errors, which, it was contended, constituted the instrument a deed, was within this exception or not; the Court held that it was; thereby establishing, that the release of errors was incidental to the power to confess judgment (*e*). The precise point cannot now arise, as the present Stamp Act, in imposing a specific duty on warrants of attorney, says "with or without a release of errors."

It may be observed that Mr. Heraud, in his book of Stamp Duties, states, that in August 1797, the Attorney and Solicitor General, (Sir John Scott and Sir John Mitford,) advised that such an instrument was not within the exception referred to.

Defeazance part of the warrant of attorney.

It was also contended, before a specific duty was charged on a warrant of attorney, that the defeazance was liable to a separate stamp duty, as an agreement, but it was determined to be part of the warrant of attorney itself (*f*).

Exemplification of administration *de bonis non.*

An exemplification of letters of administration *de bonis non* was stamped with 3*l.* the duty expressly charged by the 55 Geo. III. c. 184, schedule part 2, on an "exemplification under the seal of any Court of law or equity, of any record or proceeding therein;"

(*e*) *Barrow* v. *Mashiter*, 4 East, 431.

(*f*) *Cawthorne* v. *Holben*, 1 N. R. 279.

it, necessarily, set forth the original grant of administration; and it was objected to, as an exemplification of the records of two proceedings, and, therefore, liable to two stamps; but the objection was decided to be untenable (*g*).

Bond with surety to secure a composition, and counter-bond to surety.

A., as principal, and *B.*, as his surety, executed a bond, (in the Scotch form) for payment to the creditors of certain other persons, of a composition on their debts; and by the same instrument, *A.* bound himself to save *B.* harmless from his cautionary obligation. The bond was stamped with 35*s.* only, which was held to be sufficient, the Court observing, that it was not a bond for securing any certain sum of money; nor, was a distinct stamp necessary, in consequence of the indemnity to *B.*; the whole appeared to be one transaction; *A.'s* agreement to indemnify *B.* was, no doubt, the consideration for *B.'s* becoming surety (*h*). The propriety of this decision may, perhaps, be doubted, seeing that a specific duty is charged on a counter-bond; it is quite clear that the bond involved the payment of that duty, (the same, in amount, as the stamp which was on the bond); and it would be a contradiction, in terms, to say, that the counter-obligation was the leading object of the instrument; it seems certain, therefore, that two distinct duties were chargeable, in respect of the distinct obligations. The circumstance of a specific duty being charged on a counter-bond, does not appear to have been brought to the notice of the Court; had it been, no doubt it would have produced a different result.

Surety in a lease.

A third person was made party to a lease for the purpose of his joining, as a surety, in the covenant for payment of the rent, the other covenants being between the lessor and lessee; the lease was stamped with the *ad valorem* duty of 30*s.* on the rent, which was held to be sufficient; the covenant by the surety was accessory to the lease, and was partly the consideration for granting it (*i*). Mr. Justice *Patteson* observed, that the question was, what was the leading character of the instrument?

Guarantee in a lease for payment of a certain sum.

But an additional stamp was held to be necessary in the following case, where a third party, by what was termed a separate and distinct act, guaranteed the payment of a sum of money. *Wharton* v. *Walton* (*k*), was an action of assumpsit for recovery of a sum of

(*g*) *Doe dem. Edwards* v. *Gunning*, *Doe dem. Basnet* v. *Mew*, 7 A. & E. 240; 2 N. & P. 260; W. W. & D. 460.

(*h*) *Annandale* v. *Pattison*, 9 B. & C. 919.

(*i*) *Price* v. *Thomas*, 2 B. & C. 218; *Pratt* v. *Thomas*, 4 C. & P. 554.

(*k*) 9 Jurist, 638; 7 A. & E. (N. S.) 474.

36*l.* An agreement was made between the plaintiff, a brewer, and the defendant's son, by which the latter agreed to take a public house of the plaintiff, at a certain rent, and to purchase all the beer to be consumed in the house of the plaintiff. It was headed, "Articles of Agreement made the 31st day of January, 1843, between *Samuel Wharton*, of, &c., of the one part, and *James Walton*, of, &c., of the other part;" and at the end of it was the following stipulation, "And it is further agreed to by *John Walton*, father to the said *James Walton*, that he, the said *John Walton*, will hold himself responsible for any account of money which may become due from the said *James Walton* to the aforesaid *Samuel Wharton*, that is to say to the amount of 36*l.*" The agreement was signed on the 1st of February by all three. It was stamped as a lease; but it was objected that the guarantee required a further stamp; the learned Judge admitted the document, reserving leave to the defendant to move to enter a nonsuit. On motion, *Price* v. *Thomas*, and also *Corder* v. *Drakeford*, and *Stead* v. *Liddard*, both hereinafter stated, were quoted by the plaintiff's counsel; and *Clayton* v. *Burtenshaw*, also hereinafter mentioned (*l*), was referred to for the defendant.

Lord *Denman* said, There is one clear and simple objection to the stamp; that a penalty is agreed to be paid by one party to the instrument, in case of non-compliance with some of the stipulations in the agreement, and the payment of it is guaranteed by a third party.

Patteson, J., said, The defendant does not join in a covenant made by his son with the plaintiff, as in *Price* v. *Thomas*, but he does a separate and distinct act, in guaranteeing the payment of a sum of money.

The other Judges concurring, the rule was made absolute for entering a nonsuit.

Covenant by a purchaser with the trustees of a company in the deed transferring shares.

By the deed of settlement of a joint-stock company, it was provided, that the shares should be transferable with the consent of the company; that the directors should have power to make regulations respecting the form of transfer, &c.: and that every purchaser should, if required, either specially, or by a general regulation, execute a deed, covenanting with the trustees to observe all the regulations, &c., affecting purchasers. By a form of transfer, approved by the company, certain shares were conveyed to a purchaser, who, by the same deed, covenanted with the trustees to observe

(*l*) Pages 342, 343, 355.

such rules. The deed was stamped with the proper *ad valorem* conveyance duty, and the Court held that nothing further was requisite, the covenant with the trustees being a matter incident to the conveyance (*m*).

Stipulation in arbitration bond.

An arbitration bond, after the usual clauses, contained a stipulation respecting the manner in which the costs should be paid, which was held not to require a separate stamp as an agreement (*n*).

Receipt and agreement.

The case of *Grey* v. *Smith* (*o*) is one not free from difficulty. It was an action against the sheriff, for seizing the plaintiff's goods, under a writ of execution against a third person; and, to show that the goods were not the property of such third person, a receipt was produced for the money paid for the purchase of them of the landlord, who had distrained them; which, further, contained an undertaking, by the purchaser, to allow the goods to remain on the premises. Lord *Ellenborough* held that the receipt, which was properly stamped, as such, might be received in evidence, on the principle that, *utile per inutile non vitiatur*. If what followed had at all controlled or qualified what went before, he should have rejected the paper *in toto*, without an agreement stamp; but, as it contained a simple acknowledgment of the money being paid, a receipt stamp made it legal evidence of that fact, notwithstanding that something else was inscribed upon it.

The view taken by Lord *Abinger*, in *Odye* v. *Cookney* (*p*), was the same. A memorandum, indorsed on a mortgage, by the mortgagee, commencing with an acknowledgment of the payment of the money, and containing also, in the subsequent words, an agreement to assign the property, was allowed to be read, so far as it related to the receipt, although the other part required an agreement stamp, which was not impressed thereon (*q*).

Receipt used as proof of an agreement.

An action was brought for the recovery of 245*l.*, the price of a quantity of spirits, &c., sold. The stock had been transferred from an outgoing to an incoming tenant; and, to prove the agreement to take the stock, a bill of exchange, drawn by the plaintiff, requesting the defendant to pay him 30*l.*, being the amount of British spirits transferred to him, was produced; but was objected to for want of an agreement stamp; and was rejected by

(*m*) *Wolseley* v. *Cox*, 2 A. & E. (N. S.) 321.

(*n*) *Re Wansborough*, and *Wansborough* v. *Dyer*, 2 Chitty, 40.

(*o*) 1 Camp. 387.

(*p*) 1 M. & R 517.

(*q*) See, however, the remarks of Lord *Campbell* in *Matheson* v. *Ross*, *ante*, page 307, as to reading part of a document only.

the learned Judge, (*Abbott*, C. J.,) accordingly. In this instance, the bill was offered, as proof of a matter altogether foreign to the object of it; it was, in terms, nothing more than a bill; for which it was stamped; the agreement was a matter of inference merely; and it seems rather a forced construction of the Stamp Acts to hold it liable to any other duty. It, however, exhibits the principle (r).

Lease with contract for sale of fixtures stamped as an agreement.

Corder v. *Drakeford* (s) can scarcely be referred to in support of the doctrine, that separate matters require separate stamp duties; the instrument not being stamped for the leading object. It was the case of a demise, with a contract for the sale of the fixtures, stamped only with 20*s*., as an agreement; which, in an action for the price of the fixtures, the Court held to be insufficient, the demise requiring 30*s*. The sale of the fixtures, the Court might, perhaps, have considered, (as they seem to have done in a subsequent case,) accessory to the demise, and which a demise stamp would have covered. This case, however, plainly establishes one point, *viz.*: that if an instrument be not stamped for its leading, and principal object, it cannot be made available for any subordinate purpose, for which it may happen to be stamped. See also, upon this latter subject, *Doe* v. *Stagg* (t), where an instrument, purporting to be both a disclaimer and a surrender, was refused in evidence as the former, (for which, not being a deed, it did not require a stamp,) because it was not stamped as a surrender.

It may be further remarked, that there can be as little doubt, that if the subsidiary matter, not being accessory, would, if taken separately, require a higher duty than the principal object, the instrument would be unavailing for either, unless stamped with such higher duty; and, therefore, if in *Corder* v. *Drakeford*, the instrument had been under seal, it would have required, at least, a 35*s*. stamp, as a deed not otherwise charged, although the demise would have rendered only 30*s*. necessary. The following cases tend to show that both duties would have been chargeable; and that, consequently, the instrument could be read for neither purpose unless stamped for both.

Agreement to rent premises and to purchase goods.

In an action of covenant, for not paying for stock in trade, the following memorandum, under seal, was produced; *viz.*: "Memorandum of agreement, made and entered into this 25th Sept. 1815; that is to say, we, the undersigned, *H. R. J.* and *C. B.*, do agree

(r) *Nicholson* v. *Smith*, 3 Stark. 128, see also p. 165, *ante*.

(s) 3 Taunt. 382

(t) Page 8, *ante*.

with Messrs. *F C.*, &c., executors of the late *G. V.*, to take and hire, for our son and nephew, all that house, &c., at the yearly rent of 35*l.* per annum, we paying all taxes. It is also, by these presents, further agreed, that we will take all the stock in trade of grocery, &c., and such part of the furniture, &c , as we shall think necessary for him, at a fair valuation, on the 11th Oct. next coming; and, for the consideration and amount of such stock, &c., we do agree to pay 1000*l.*" This deed was stamped with 30*s.* as a lease; it was contended that it was not a lease; that if it was, it was something more, and should, at all events, have had a stamp of 35*s.* The deed was rejected, and the plaintiff was nonsuited; and, on a motion to set aside the nonsuit, the Court held that it was not a lease; thereby establishing that it was not sufficiently stamped for any purpose, being under seal (*u*).

Opinions.

It was not necessary to inquire whether, supposing it to be a lease, the stamp was still sufficient. *Bayley*, J., said, "If the instrument were a lease, and something more, then a further stamp might be necessary; but, although I have formed an opinion upon that point, it is not necessary to express it." *Littledale*, J., said, "It appears to me, that the nonsuit was right, whether the instrument be a lease or agreement. If it be a lease, still, I think it clear, that the stamp was insufficient; the fixtures might be accessory to the house, but the goods were not so, and were not the subject-matter of the demise. Now, the words of the statute, requiring certain stamps upon leases, apply only to that which is let; the question, therefore, seems free from doubt; for, besides the words of demise, or agreement to demise, this instrument contains a contract, by deed, for the sale of goods; such a contract is not within the exception in favour of bargains for the sale of goods, and the deed, not being otherwise charged, was liable to a duty of 1*l.* 15*s.* It is said that inconvenience will be produced by such a decision; without inquiring whether this be so, or not, it suffices to say that the consequence cannot alter the law."

Nothing can possibly be more definite than the opinion thus expressed. Here is the case of an instrument, which may be said to be entire in its nature, and to relate to one transaction only, for the whole is connected, in respect of one portion of which, it is assumed that a specific *ad valorem* duty is chargeable; but, inasmuch as the other portion is collateral, and not accessory to that which is so specifically charged, although, really, a part of the same

(*u*) *Clayton* v *Burtenshaw*, 5 B & C 11

contract, it is not covered by such duty, but involves the payment of a further duty, as if it had formed the subject of a separate instrument.

Demise and agreement.

A writing, being a demise of one of several houses, and an agreement to sell to the lessee the whole of them, on payment of a certain sum within seven years, was held to require an agreement, as well as a lease stamp (*x*).

But an agreement, contained in a lease of a house, that the lessee should have the right of purchasing the same property at the end of, or at any time during the term for a given sum, was treated as part of the consideration for the rent; and it was held that the lease stamp was all that was necessary (*y*).

Lease of a house and of furniture and fixtures.

The following case is clear as to the necessity for an additional stamp, in respect of a collateral matter. A lease of a house and some land at 370*l.* a year, and of furniture and fixtures at 50*l.* a year, of which latter a separate reservation was made, was stamped with 3*l.* as for a rent above 200*l.*, and under 400*l.*; it was contended, that the rent for the furniture and fixtures being merely accessory, no stamp was required for it; but the Court held the stamp to be insufficient. *Tindal*, C. J., observed, that the plaintiff was in this dilemma; the 50*l.* was either accessory, or distinct; if accessory, it should have been calculated with the principal sum, and a 4*l.* stamp would then have been required; if distinct, it would fall within the description of a lease, of any kind, not otherwise charged; and should have had a separate stamp of 1*l.* 15*s.* (*z*). See this case and the remarks thereon under the head "LEASE."

Apprentice bound to separate masters for different terms.

An apprentice was bound, by one indenture, to his father, and to a stranger, carrying on separate trades, for seven years; to serve the latter for the first four years, and his father for the last three years. One stamp was held to be sufficient (*a*).

Assignment of apprentice with fresh terms and for extended period.

An apprentice was assigned to a new master, on fresh terms, and to serve an additional year; the assignment was stamped with 20*s.*; it was contended that it should have had a further stamp, in respect of the extension of the period of service, as it effected two objects, an assignment and a new apprenticeship. The Court considered that the Stamp Act contemplated an alteration in the terms, and

(*x*) *Lovelock* v. *Frankland*, 16 L. J. R (N. S.) Q. B. 182; 8 Ad. & E. (N. S.) 371.

(*y*) *Worthington* v. *Warrington*, 17 L. J R. (N. S.) C. P. 117; 5 M. G & S. 536.

(*z*) *Coster* v. *Cowling*, 7 Bing. 456.

(*a*) *Rex* v. *Louth*, 8 B. & C. 247.

held, that in the absence of an express imposition, the stamp was sufficient (*b*).

Conveyance (not on sale) and deed not otherwise charged.

A testator, by his will, devised lands to *A.* in fee, subject to certain payments, if the personalty should be insufficient; and he, also, confirmed a settlement he had made of certain stock, still standing in his name, and appointed *A.* his executor. The personalty was insufficient, and *A* proposed and agreed to substitute other lands of his own for some of those charged by the will, and to transfer the stock; and a deed was prepared accordingly; whereby it was witnessed, that the stock should be transferred into the names of certain trustees, upon the trusts of the settlement; and it was, also, witnessed, that, in consideration of 10*s.*, *A.* granted, bargained, sold, &c., certain lands, to the same persons, upon trust, amongst other things, for indemnifying the devised lands from the charges by the will. The deed was stamped with 35*s.*, and progressive duties of 25*s.* It was contended that it was, in substance, two distinct deeds, each requiring 35*s*; one, as a "deed not otherwise charged," the other, as a "conveyance not otherwise charged," although it was used at the trial only as a conveyance. The Court held, that, except in cases of conveyance by way of sale, they found no provision, that where a deed operated on several subject-matters it should have separate stamps; and, that in the absence of any such provision they thought one stamp sufficient (*c*).

The proposition in this case was an extravagant one, although not without an appearance of reason; it, certainly, never received the sanction of an opinion at the Stamp Office. There are various items of duty, of the same amount, to be found in the schedule to the Stamp Act; each referring to instruments of a general description; and sufficiently comprehensive to embrace, in many instances, the same instruments, but it would be unreasonable to suppose, that it could have been intended to subject an instrument to more than one such duty. The following are some of such general heads, *viz.*:

	£	s.	d.
ASSIGNATION OR ASSIGNMENT of any property not otherwise charged . . .	1	15	0
CONVEYANCE of any kind, not otherwise charged	1	15	0
DEED of any kind, not otherwise charged .	1	15	0

(*b*) *Morris* v. *Cox*, 2 M. & G 659.

(*c*) *Doe dem Hartwright* v. *Fereday*, 12 A & E. 23, 4 P. & D. 287.

If it had been held that the point, in the last case, was correctly insisted upon, a single instrument might be chargeable under each of these heads. It is evident, that this ordinary amount of duty was intended to be charged in all, possible, cases, where none other was made payable. If an assignment, or conveyance of property, (where no *ad valorem* duty is imposed,) be made by deed, then the instrument will fall under the head of "DEED;" if it be not by deed, then under one of the others; and, although the deed may contain many subject-matters, yet, if none of them come under any specific head, so as to be chargeable with a separate and distinct duty, such deed will, probably, still only be liable to the same amount. See the last sub-division (IX.) of this chapter.

The case of *Doe dem. Wheeler* v. *Wheeler* (*d*), is somewhat of the nature of the foregoing. A deed of feoffment was made in consideration of natural love and affection, and of 10*s.*; but not containing a letter of attorney to deliver or receive seisin. It was stamped with 35*s.* and 20*s.*; but it was contended, that, from the tenor of the Stamp Act, referring to the additional duties on feoffments required in cases of sales, a further duty of 35*s.* was required; and that the same was imposed under the head, "Conveyance of any kind not otherwise charged;" or, (as it is explained in the report of the case in *Nev. & Man.*) that, as the single deed of feoffment embodied the united effects of a lease and release, it was, within the intention of the Act, liable to the same amount of duty as would have been required if the conveyance had been by lease and release; and that, in such case, where the consideration was merely nominal, 35*s.* would have been required on each instrument. The Court, however, considered that the deed was properly stamped.

The argument in this case is, scarcely, intelligible; a glimpse of the meaning of it is afforded in the report in *Nev. & Man.*; and the answer is, that the Act does not impose a double duty, in terms; and cannot be considered as doing so by implication, or analogy.

On purchase and mortgage of copyholds, deed of covenants with purchaser, and by him with mortgagee.

On a purchase of copyholds, where a part of the money was borrowed, the property was surrendered to such uses as the lender should appoint, and, in default of appointment, to the use of him and his heirs; and, by another instrument, the same property was surrendered to the use of the purchaser and his heirs, subject to

(*d*) 2 A. & E. 28, 4 N. & M. 10

the surrender before-mentioned. By a deed, of the same date, reciting the contract for the sale, and the surrenders, the vendor covenanted for the title, &c., with the mortgagee, and, also, separately, with the purchaser; and the latter covenanted, likewise, with the mortgagee, for payment of the money advanced by him, &c.; and the deed contained a power of sale, a proviso for quiet enjoyment by the purchaser, until default, and, also, a declaration, that the surrenderee to uses should stand seised for the mortgagee, for securing the money advanced. The deed was stamped with 1*l.* 15*s.*, only, and it was contended, that it should have had separate stamps for the several transactions; the covenants by the vendor having nothing to do with the matters between the other parties. But it was held that it was sufficiently stamped. It was only one indenture, relating to one subject-matter, although embracing a variety of covenants (*e*).

However satisfactory the result of the case of *Doe* v. *Fereday* may be, the reason given for the judgment seems insufficient to sustain it. It is stated to be founded on the absence of any provision, similar to that in the cases of conveyance upon sale, for charging a deed, which operates on several subject-matters, with several stamps. It is quite true, that such a provision exists in the case of conveyances upon sale; it was imported into the 55 Geo. III. c. 184, from the 53 Geo. III. c. 108, s. 5; but why it should have been considered necessary at all, does not appear. The legislature, however, in declaring that the additional duty should be payable in future, thought it right also to declare, that instruments of this description, made before the passing of the Act, should be valid, although they might not have paid the further stamp duty (*f*), so that it must have been considered so doubtful whether such further duty did previously attach, or not, as to make it necessary, or desirable to accompany the positive imposition of it with an equally express exception as to the past; which was, of course, wholly unnecessary, if the duty was then, for the first time, payable. It is not strictly correct to say, that no such provision exists in any other instance. It is to be found under the head of Mortgage, also, as well as that of Bond; and not only in the present Act, but in the 48 Geo. III. c. 149; but the cases decided upon the principle it involves, do not, for the most

(*e*) *Rushbrooke* v. *Hood*, 11 Jurist, 931; 17 L J R (N. S.) C. P. 58; 5 M. G & S. 131

(*f*) See "CONVEYANCE ON SALE," *ante*, page 215

part, refer to the special enactment; they should be considered, therefore, as determined upon a general, inherent principle.

Certainly the express declaration, under the heads Conveyance, Bond, and Mortgage, for charging any distinct matter with separate stamp duty, creates a difficulty, by raising an inference that it was necessary, in order to effect the object intended; it is not, however, to be conceded, that because the legislature has thought proper to make a positive enactment, for the sake of clearness, in one instance, *viz.*, the case of *ad valorem* duties, an adverse construction is to be put upon the Acts in other cases. Courts of law have not required express authority for deciding that a multifarious deed shall have several stamp duties. The 12 Anne, stat. 2, c. 9, s. 24, enacts, that where any one or more of the matters or things charged with stamp duty shall be written upon one piece of parchment or paper, the duties shall be charged upon every one of such matters. This referred to several distinct instruments upon one piece of parchment; the duty being imposed "for every skin, or piece of vellum, or parchment, or sheet, or piece of paper, upon which shall be engrossed any deed, &c.;" and was enacted to prevent fraud, in writing two or more instruments upon the same skin, &c., with one duty only; but the provision was, evidently, not necessary, as the Courts would have put a proper and reasonable interpretation upon the statutes in this respect, as they have since done where *one* instrument was made to effect several distinct matters, by treating it as several instruments, and requiring stamps accordingly.

By the 44 Geo. III. c. 98, *ad valorem* duties were imposed on certain deeds, which, before, were subject only to a common duty; and the variety of *specific* duties was thereby extended; and it was provided, that no *single* instrument, article, matter, or thing, which was thereby subject or liable to only one *specific* duty, should be charged under two, or more, separate, and distinct heads, or denominations; from which provision the inference, necessarily, arises, that where an instrument had a double operation, by reason of matters therein, each of such matters being referred to a *specific* head of duty, a stamp would be required under every specific head. Thus, a deed, being a mortgage, and also a bond, or a lease, (not accessory,) would be liable to duty under these several heads; such instruments being, specifically, charged. Again, a writing being a memorandum in respect of the conveyance of merchandise by ship, which is charged, specifically, as a charter-party, and containing, also, matters of contract, totally foreign to the charter-party, and

wholly unconnected therewith, would be chargeable as a charter-party, under that particular head, and likewise, as an agreement; and if the writing was a deed, there can be no doubt that it would be liable as a charter-party, and, also, as a deed. The same may, of course, be said in reference to the present Stamp Act.

The necessity for the enactment in the 44 Geo. III. c. 98, above quoted, may be exemplified by, again, instancing the case of a charter-party, but containing, only, matter relating to the charter of the ship; which would, in every respect, as regards the same matter, fall, also, within the description of instrument charged under the head of agreement. Therefore, to such a case, the provision applies with proper effect, to prevent a double charge for a single instrument. Policy of assurance is another instance.

The same necessity for the enactment exists in regard to the present Acts; the clause must, therefore, be considered as still in force, and as affording an interpretation, that where an instrument, having a two-fold operation, or, containing matters of distinct character, some or one of which matters are, or is, charged, specifically, with duty, it is not essential that reference should be made from any one, specific, head in the Stamp Act, under which the instrument is, expressly, charged, to any other specific, or perhaps general, head, for a further duty, in respect of any other specific, or general matter, not covered by the former.

In the case of a mortgage made upon property, already charged in favour of the same party, and, also, upon other property, if the latter be made a security for the money, before, advanced, the deed is liable to the ordinary deed duty, in respect of this latter property, in addition to the *ad valorem* mortgage duty on the further sum. This was settled in *Lant* v. *Peace* (*f*). The special provision, applicable to such a case, under the head of mortgage, may be said to have influenced that decision; but, although it was referred to by counsel, the Court did not allude to it. See other cases of the kind, also, under the head "MORTGAGE." Again the cases of *Corder* v. *Drakeford*, *Clayton* v. *Burtenshaw*, and *Coster* v. *Cowling*, before mentioned, were all decided upon the principle, that where any subject-matter is, specifically, charged with duty, the instrument shall be liable to further duty in respect of any other subject-matter, not incidental thereto; and the other decisions mentioned previously to these last, although against the payment of the further duty, proceeded upon the same rule; such duty being

(*f*) 8 A. & E. 248; W. W. & H. 271.

held not to be necessary, because the second subject-matter was accessory to the first.

It is, therefore, manifest that the reason given in the case of *Doe* v. *Fereday*, must be received with a qualification; and be deemed to apply only to those cases where no duty is, specifically, charged on any particular subject-matter contained in an instrument which relates, also, to a distinct matter.

Settlement of money and land.

The instance of a settlement of both money and land, or other property, may be considered deserving of special notice; as one, in which the point, here discussed, frequently arises, but which, from certain peculiarities in the enactments, is looked upon as, (doubtfully, perhaps,) forming an exception to the rule contended for.

Under the head "SETTLEMENT," a specific *ad valorem* duty will be found to be charged on any deed, or instrument, whereby any definite and certain principal sum or sums of money, shall be settled, or agreed to be settled. The duty has express reference only to the money, and is regulated by the amount; and, certainly, it would seem as if the stamp in respect of it could give no validity to the instrument, in its relation to any other matter. It is perfectly clear, that if such other matter be referrible to a specific title, regard must be had to such title; if any proof of this be wanted it may be obtained from the exemptions from the settlement duty, (and this affords a guide to the interpretation of the Act in case of other subjects of specific charge, where no reference is made from one to the other); by the first of which it is provided, that bonds, mortgages, and other securities, operating as settlements, if chargeable with the *ad valorem* duties on bonds and mortgages, shall be exempt from the settlement duty; but this leaves the main question, arising in the case of settlements, untouched, *viz.*, whether, where the other matter is not, specifically, charged, a common duty is payable, such other matter being a settlement of property. *Ad valorem* duties on settlements of money were first introduced by the 55 Geo. III. c. 184; previously thereto, therefore, a settlement of money and other property was chargeable only with one ordinary duty; and from the peculiarity of the scale of duty on settlements of money, it might, probably, be inferred, that the legislature did not intend that any other than such duty should be payable, although the instrument might include also a settlement of land, or other property. The lowest duty in the scale is, precisely, the amount of the common deed duty, 1*l.* 15*s.*, which is not the case in any other instance of *ad valorem* duties;

and, contrary, also, to the general rule in such cases, the progressive duties are 1*l.* 5*s.* and not 1*l.*

Another circumstance in favour of this view may be noticed; that, whatever may be the value of the fortune settled, if there be no specific sum, the instrument will not be chargeable under this head of settlement; and, therefore, however various the settled property may be, the deed will only come within the charge of "Deed of any kind not otherwise charged," and be subject, only, to this ordinary duty of 1*l* 15*s*.

After much consideration, the view entertained at the Stamp Office, on this question of settlement duty, is in accordance with the suggestion here made.

Mortgage, and other matter not incidental.

On an advance made of certain trust moneys, lands were conveyed to trustees, by way of mortgage, for securing the same, upon the trusts declared in a marriage settlement as to other funds; and at the conclusion of the deed was a declaration that a certain sum, described as the balance of the wife's fortune, and as still remaining charged on the estates of the mortgagor, should be vested in the trustees above alluded to upon the same trusts. It was held, in a case in Ireland, that the deed was liable to a further duty, besides the mortgage duty, as containing other matter, not incidental to the mortgage (*g*). This decision was in reference to a special provision in the Irish Stamp Act, similar to that in the 55 Geo. III. c. 184, under "MORTGAGE."

Lease of lands at rents specified, and of other lands at rents not specified.

The case of *Parry* v. *Deere* (*h*) cannot be said to be at variance with the general doctrine, although it may, at first, appear to be so. That was an action of assumpsit, for use and occupation. An agreement was entered into for letting lands, at the rent of 200*l.* for the first ten years, and at 210*l.* for the remainder; and, also, other lands, at the rent then paid for the same by other persons; which rent was not specified, but was proved to be certain sums respectively. The agreement was stamped with 3*l.* as a lease, sufficient to cover a rent exceeding the aggregate of all the yearly sums in question; but it was contended, that in respect of the demise of the lands at rents not stated, there should have been an additional stamp of 1*l.* 15*s.*, as for a lease not otherwise charged; the Court, however, held the stamp sufficient. Here the subject-matter was entire; it was a demise, and, a demise only; for rents reserved, although not specified in every particular;

(*g*) Lessee *Murphy* v. *Connolly*, 6 Ir. L. Rep 116.

(*h*) 5 A. & E. 551; 1 Nev & P. 47; 2 H. & W. 395.

there being nothing in the Stamp Acts to oblige the parties to set forth, in a lease, the amount of the rent; as is the case with respect to the consideration in a conveyance upon sale. In the instance of a lease, the *ad valorem* duty is charged on the amount of the rent reserved; and, although the amount might not exactly appear in the lease itself, still, according to the letter of the Act, the duty is payable in respect of it; unless it should be held that the general principle, that an instrument must be stamped according to what appears on the face of it, must prevail. In the case of a conveyance upon sale, the duty is charged on the consideration *expressed* in the deed; and which consideration is required to be *truly* expressed therein, in order that the full and proper duty may attach. Viewed in any way, the stamp was sufficient. See the case and the remarks thereon under the head "LEASE."

Lease with two habendums, &c.

A lease contained a demise of two separate farms, with two habendums, differing from each other in duration, a reservation of two distinct rents, and covenants, some applying to one farm, some to another; and it was held, that one *ad valorem* stamp, calculated on the aggregate of the two rents, was the proper stamp, and not a separate one for each rent; it was, virtually, and substantially, one transaction (*i*).

Surrender on sale, with contract for new lease.

By indenture, made between *D. D.* of the one part, and *G. P.* of the other part, reciting a lease for lives, the interest of which was in *D. D.*, the reversion being in *G. P.*; and, that *D. D.*, in consideration of 120*l.* and of a new lease to be granted to him for his life, by *G. P.*, at an increased rent, had agreed to surrender the premises; it was witnessed, that, in consideration of 120*l*, and of such new lease to be granted, *D. D.* surrendered the premises to *G. P.* The deed was stamped with 30*s.* as a conveyance for 120*l.* It was contended that an agreement stamp was, also, necessary, in respect of the undertaking to grant a new lease; but the Court was of opinion that the deed was sufficiently stamped: that the agreement for a lease was part of the contract, and incident to, and necessarily connected with the sale (*k*).

Letter of attorney in Ireland, for different purposes.

In Ireland, previously to the Assimilation Act, letters of attorney for certain specified purposes, as to receive rents, execute deeds, &c., were charged with separate and distinct duties, there being, also, a general duty on a letter of attorney not otherwise charged; and it was declared, that if a letter of attorney empowered a person

(*i*) *Blount* v. *Pearman*, 1 Bing. N. C. 408.

(*k*) *Doe dem. Phillipps* v. *Phillipps*, 11 A. & E. 796; 3 P. & D. 603.

to perform different acts, charged with separate duties, then a duty should be payable, as therein charged, with respect to each such act. It was held that a letter of attorney to receive rents, and also to give notices to quit, (the latter not being *specifically* charged,) was liable to two duties. But it seems to have been considered, that if it had been to distrain for rent, one stamp would have sufficed; the act being incidental, and ancillary to that to receive the rent (*l*).

Purchase of annuity for several persons.

An annuity of 70*l.* was granted to *Cook*, but it was stated in the deed, and memorial, that part of the purchase-money was *King's*; and that *Cook* would stand possessed of the annuity, on behalf of himself and *King*, in the proportions of 60*l.* and 10*l.* The deed and memorial were stamped as for one annuity only, which was considered sufficient (*m*). This decision was previously to any legislative enactment upon the point; but it is to the same effect, so far as the deed is concerned, as the special provision in the 55 Geo. III. c. 184, under which the *ad valorem* conveyance duty is payable on the aggregate amount of the purchase-moneys, in cases of a similar description.

Indorsement on a deed before delivery.—Transaction *in fieri.*

On a deed of covenant to pay an annuity, quarterly, an indorsement was made, by which it was stipulated, that the payments should be half-yearly; the indorsement was made after the signing, but before the sealing and delivery; Lord *Ellenborough* held that the indorsement did not require a stamp, the whole being one transaction, done at the same time (*n*). It does not seem very clear how the indorsement could be considered as incorporated with, and read as a part of the deed; and, unless it could be so treated, it would appear to be, altogether, ineffectual. As a separate writing, not under seal, it could not, of course, even if stamped, be read, to vary the deed.

Agreement signed at different times—one contract.

An agreement signed by one party, but not finally concluded, and to which, at a subsequent meeting, a penal clause was added, and which was then signed by the other party, was held to be one agreement, liable to one stamp only (*o*).

Writings at different dates forming one contract.

An agreement was made to the following effect, *viz.*: "Whereas doubts have arisen with regard to the line of boundary between, &c., and it is desirable to have the true boundary laid out, by reference to the maps of both parties, they have agreed, and do

(*l*) Lessee *Booth* v. *M'Gowan*, 4 Ir. L. R. 188.

(*m*) *Cook* v. *Jones*, 15 East, 237.

(*n*) *Lyburn* v. *Warrington*, 1 Stark. 162.

(*o*) *Knight* v. *Crockford*, 1 Esp. 189.

hereby agree, to leave the same to be determined by an indifferent surveyor, &c. Dated 16th May, 1839." The following addition was afterwards made on the same paper, *viz.*:—"The above parties not having been able to appoint a surveyor residing out of the neighbourhood, have agreed, and do hereby agree to appoint Mr. *Edward Williams*, of Mold, land-surveyor, for the purpose of setting out the boundary, according to the maps belonging to the Lords of Mold, and the said *J. P.*; and to abide by the line so to be set out by him; and according to which boundary stones shall be immediately set down. Dated 25th May, 1839." A stamp was affixed to the first agreement, but none to the second; which was, therefore, objected to. It was held to be sufficiently stamped; *Tindal*, C. J., observing that it seemed to him that the two memorandums constituted one agreement (*p*).

It is quite true that, in this case, the two documents must be construed together as one, or, as if they were one instrument; and in that sense they may be called one instrument; but nothing can be plainer, than that on the 14th May the parties had come to, and perfected one agreement; and that a fortnight after, they modified that agreement, by signing another. If it could be considered, that when the first was signed everything was done, except naming a surveyor, and that the second was, merely, a nomination of such a person as an arbitrator between the parties, the decision would, perhaps, be right.

Separate writings, interchanged, forming one contract.

Two separate undertakings were given by different persons, one in consideration of the other, and both in relation to the same matter; the plaintiff in an action gave one in evidence, properly stamped, and then offered the other; which was objected to, for want of a stamp thereon; but it was admitted; and on a motion to set aside the verdict obtained, the Court held that it was rightly received, as the two documents, in fact, formed only one agreement; the Lord Chief Baron observing, that the Court thought, that the case fell within the same rule as that of several letters evidencing one agreement, in which case it was provided, that if one letter was stamped with 35*s.* it should be sufficient (*q*).

Cognovit with undertaking on separate paper to delay execution.

In *Morley* v. *Hall* (*r*), it was attempted to invalidate an unstamped cognovit by connecting it with a separate paper, whereby the plaintiff's attorney undertook not to issue execution for a

(*p*) *Taylor* v. *Parry*, 1 M. & G. 604.

(*q*) *Peate* v. *Dicken*, 1 C. M. & R. 423. See the observations on this case, page 43.

(*r*) Page 35, *ante*.

certain period; but Mr. Justice *Taunton* held, that the cognovit was not thereby made liable to duty, as containing terms of contract.

Several writings by different persons—one contract.

A. and *B.* having engaged in an adventure, a letter is written by the former to the latter, containing a proposal of certain terms as to disposing of the proceeds of a cargo, &c.; at the foot of which *B.* writes his consent; *C.* indorses on it a guarantee, as to the disposition of certain of the proceeds, and other moneys connected with the concern. All the writings were of different dates. The paper was stamped with 35*s*. The defendant contended that the contracts of *A.*, with *B* and *C.* were separate, and that two stamps were required, but the Court held one sufficient (*s*).

Both liable if on different pieces of paper and reference be not made from one to the other.

Reference is made in Mr. Chitty's work on the Stamp Laws (*t*) to a manuscript case of *Richards* v. *Franco*, in which Lord *Tenterden* held two stamps necessary. A paper was signed by a married woman, whereby she contracted to sell to the plaintiff two dividends on certain stock, for a certain sum; and another paper was signed by the defendant, the trustee of the fund, engaging to pay over the dividends to the order of the husband and wife, on receiving their usual receipt; but this latter document, which was stamped, did not refer to the former, which was unstamped; and this distinguished the case from *Stead* v. *Liddard.*

An agreement referring to an unstamped one annexed.

To prove a tenancy, two papers were given in evidence; the first dated 29th January, 1833, entitled, "Memorandum of an agreement, between *Rich. Cheslyn* and *John Webberley;*" which, in effect, amounted to a lease; the other was dated 16th March, 1833, and annexed to it; and, after reciting that the within-named *J. W.* and *R. C.* having agreed to abandon the annexed contract, proceeded thus: "We *Wm Pearce* and the said *Rich. Cheslyn* do agree, the former to take and become tenant, and the latter to let, &c.—the therein farm, &c., contained in the same, &c.; the rent to be paid quarterly, and to be in amount 200*l.*; and we further bind ourselves to execute a similar agreement to the one recited and referred to." The former had no stamp, the latter had a lease stamp of 3*l.*, and the Court was of opinion that the second agreement incorporated the first, which might be read though not stamped, and thereby constituted a perfect lease, on the terms of the earlier agreement (*u*).

This case may, perhaps, be considered as somewhat doubtful; and

(*s*) *Stead* v. *Liddard*, 8 Moore, 2; 1 Bing. 196.

(*t*) 2nd edit. p. 28, note.

(*u*) *Pearce* v *Cheslyn*, 4 A. & E. 225; 5 N. & M. 652; 1 H. & W. 768.

care must be taken that it does not mislead. The first contract, which was between other parties, was looked upon as merely so many words of the second, being treated as a schedule to the latter, and as incorporated with it.

Parol agreement referring to an unstamped

The case of *Turner* v. *Power* (*x*) is not very readily distinguished from the last, but the result was different. The plaintiff and defendant agreed, by parol, that the latter should become tenant of certain premises, upon the terms and conditions contained in a written agreement between the plaintiff and a third person, who had been tenant of the same premises. This document was stamped as an agreement, but it was, in effect, a lease, at a rent exceeding 20*l.*, and not exceeding 100*l.*, and required, therefore, a stamp of 30*s.* The counsel for the plaintiff referred to *Drant* v. *Brown* (*y*), but the Court observed, that the document, in that case, was merely a proposal, and not an agreement.

The paper here was refused to be looked at, because, being a substantive instrument, between other parties, it was not properly stamped as such The first contract in *Pearce* v. *Cheslyn* was precisely of the same description; the one was at an end by effluxion of time, the other was abandoned; but, both having been executed, there was, in point of law, no distinction between them, as to their liability. The difference in the circumstances of the cases was this, that in *Pearce* v. *Cheslyn* the first instrument had become a portion of the second, as if it had actually been written over again; and, as before observed, was to be treated, only, as so many words of it; whilst, in *Turner* v. *Power*, the first was referred to as a substantive, independent instrument. This difference is, perhaps, sufficient to distinguish the cases; although the distinction is scarcely broad enough to be satisfactory.

In *Walliss* v. *Broadbent* (*z*), the declaration stated an agreement between *A. E.*, and the defendants, to demise certain premises to the latter, at 63*l.*, on certain conditions, set out; to continue in force from year to year, so long as both parties should agree, &c.; that *A. E.*, by will, devised to the plaintiff; and, that in consideration that he would permit the defendants to hold at 60*l.*, upon all the terms before mentioned, the defendants promised to abide by, and observe and perform the terms of the former agreement. The plaintiff offered in evidence the former agreement, but it was rejected, not having a lease stamp; and he was non-

(*x*) 7 B. & C. 625. (*y*) Page 21, *ante*.
(*z*) 4 A. & E. 877.

suited. On motion, the Court held, that, as the original agreement must be proved, as essential to the plaintiff's case, the terms having been put in issue, the nonsuit was right. Mr. Justice *Coleridge* observed, "I do not wish to be bound by the assertion, that if there had been proof of an express promise to hold upon the terms contained in the original instrument, the mere production of the instrument, without proof of the execution, or stamp, might not be sufficient."

The distinction, thus suggested, between the case of the mere production of an instrument, made by other parties, for the purpose of showing the terms of the second contract, and that where the necessity exists for proving the former, does not seem to rest on any sure foundation. In *Turner* v. *Power*, it does not appear that anything more than the identity of the former instrument was necessary; it is not stated to have been proved, or attempted to be proved.

Whatever question may arise as to the liability of an instrument to several duties, the Stamp Acts do not interfere to prevent persons from including, with a view to saving expense, any number of subject-matters, of however distinct a character, in one deed (*a*).

V. As to the Effect of Alterations made in Instruments after they are executed.

WHETHER the validity of an instrument is affected by an alteration made in it, is a point of some nicety; and one in which a consideration of the Stamp Laws is, frequently, involved; but the principle which governs the question, where the stamp duty is concerned, is one of a very simple nature, whatever difficulty may be experienced in its application; it may be thus stated; *viz.*: Where, by reason of an alteration made in it, an instrument becomes a new one, a fresh stamp is required. The re-stamping of an altered instrument, therefore, where that can be done, will get rid of any objection to it, founded on those laws. Many of the decisions upon the subject have been come to in reference to policies of sea insurance; but the question, in, by far, the greater proportion of cases, has arisen on bills of exchange, and promissory notes. These instruments are, however, from their peculiarity, distinguished from all others; and are, to a certain extent, governed by laws, not applicable to instruments in general; the rules relating

(*a*) *Anon* 1 Molloy, 438
See "Addenda," *Wells* v *Bridger*.

to the former admitting of great latitude, with regard to alterations, whilst, on the other hand, the latter, it may be said, are, in practice, controlled with more than ordinary strictness in this respect; the question, therefore, as to the effect of alterations in such instruments, will be found discussed under the divisions of this work relating to them, respectively. But, notwithstanding this varied mode of treating instruments of different descriptions, the position, in regard to the stamp duty, remains the same. An instrument can be liable to duty once, only; and, where an alteration is made in it, if the point given rise to, be confined to the question, whether, or not, the instrument is destroyed, the consideration of the Stamp Laws does not enter into it; but if, in reference to the general law, the document, as altered, may be read, the question then is, whether such altered document is that originally made, or a new one; if the latter, a second stamp duty has become payable. Two duties can be chargeable only where there are two instruments.

Beyond the question, how far, by reason of an alteration, the validity of an instrument is affected, in reference to the stamp duties, it is not, properly, the business of this work to investigate; but, as the reported cases do not, at all times, show the grounds upon which the decisions proceed, it does not clearly appear to what extent they have been influenced by a consideration of the Stamp Laws; and it becomes, therefore, a matter of some difficulty to distinguish, accurately, the principles of such decisions; thus, in treating upon the subject, a discussion of the whole question, as to the effect of alterations, generally, in executed instruments, is, in a measure, necessary; the writer, however, enters upon it, at all, with much diffidence, and is deterred from engaging in an elaborate disquisition; very little more, therefore, will be attempted, than a reference to the authorities upon the point.

Fraud.

Fraudulent alterations, made with the view to an evasion of stamp duty, are of a character wholly distinct from those which affect, only, the validity of instruments, whether with regard to the stamp duty, or otherwise; they involve a charge of felony, which, as to the duty, may be described to be, an attempt to make the same stamp serve for two instruments, by a conversion of one, which was liable to stamp duty, and was stamped, into another, liable, also, to a duty, without getting the paper re-stamped. For this branch of the subject see "FORGERY, FRAUD."

A new instrument created by alteration requires a fresh stamp

Where an instrument is complete, being in such a state as not to admit of an alteration, in a material part, without avoiding it, and the parties, themselves, make such an alteration in it, they

thereby destroy the instrument, as first executed, and constitute it a new one; upon the principle, therefore, before mentioned, a fresh stamp becomes necessary, the former one having been exhausted.

Alteration in sea policy.

This is exemplified in the cases of *Hill* v. *Patten* (*b*) and *French* v. *Patton* (*c*). An insurance was effected on "ship and outfit," in a voyage upon the Southern Whale Fishery; after the sailing of the ship, it was discovered, that, owing to a misunderstanding between the broker and his principal, a mistake had been made in the insurance; and, by a memorandum, indorsed on the policy, it was agreed to be altered to "ship and goods." In the first-mentioned action the plaintiff declared on the policy, as altered; but the Court held, that the alteration was not one authorized by the Act relating to sea-policy stamps, (35 Geo. III. c. 63, s. 13,) and that, consequently, the action could not be sustained, for want of a fresh stamp. The second action was brought on the policy, as it, originally, stood; but the Court determined that the alteration was made, not by a stranger, but by a party having authority; and that it was effectual to bind all parties; but wanting one circumstance, [a stamp,] to give it legal effect; and, though such altered instrument was ineffectual to sue upon, it was effectual to do away with the former one, which was thereby abandoned.

Alteration in, and re-execution of warrant of attorney.

A warrant of attorney for securing 1000*l.* was executed, with the proper attestation by an attorney; before judgment was entered up it was altered, by substituting 2000*l.*; and the defendants re-executed it, by retracing their signatures, with a dry pen, and, again, delivering it; the subscribing witness said, "I must go through the same formalities," and, thereupon, drew a pen over the attestation and signature, saying, "I subscribe myself as such attorney." This was held not to be sufficient within the 1 & 2 Vict. c. 110 (*d*). The only point in this case seems to have been as to the sufficiency of the re-execution, with reference to the special provisions of the statute; founded upon the undisputed position, that the alteration was one that totally annihilated the original instrument, and created a new one, requiring a repetition of all the formalities of execution and attestation; and, likewise, a new stamp, which was, no doubt, impressed upon it, no objection being taken on the ground of any deficiency in that respect.

Alteration by

The case of *Reed* v. *Deere* (*e*) was that of an alteration in the

(*b*) 8 East, 373.
(*c*) 9 East, 350.
(*d*) *Bailey* v. *Bellamy*, 9 Dow. 507.
(*e*) *Ante*, page 311.

indorsing subsequent contract.

terms of an agreement, by indorsing a subsequent one upon it; the latter, not being stamped, could not be admitted; but the Judge looked at it, and finding that it superseded the first, he refused to admit that, likewise, although the declaration contained counts applicable to it; and the plaintiff was nonsuited. On motion, the Court held the nonsuit right.

How far an alteration affects the validity of an instrument, as it originally stood, is a point, as before observed, not, in every case, readily determined.

By what alterations deeds are vitiated.

In *Pigot's case* (*f*), it was resolved, that where any deed is altered, in a point material, by the plaintiff, himself; or, by a stranger, without the privity of the obligee; be it by interlineation, addition, rasing, or drawing a pen through a line, or through the midst of any material word, the deed thereby becomes void. And several instances are given; as, a bond to the sheriff, with the sheriff's name omitted, and afterwards interlined, whether by the obligee or a stranger; or, a bond for 10*l.*, and, after the sealing of it, another sum added; or, a bond rased, by which the first word cannot be seen; or, where the word is drawn through with a pen and ink, but is still legible; and whether in any of such cases the act was allowed by the obligee, himself, or was done by a stranger, without his privity. That if the obligee, himself, alter the deed, by any of the said ways, although it is in words not material, yet the deed is void; but that if a stranger, without his privity, alter the deed, by any of the ways, in any point not material, it shall not avoid the deed.

Thus two points seem to be established, by this case, *viz.*:

1st. That an alteration by a party, whether in a material part, or not, avoids the deed.

2ndly. That an alteration by a stranger, without the privity of the parties, avoids the deed, if it be in a material part.

It was, likewise, resolved, that where a lawful deed is rased, whereby it becomes void, *non est factum* may be pleaded, and the matter given in evidence. Upon this point, however, see *Hemming* v. *Trenery* (*g*), and *Mason* v. *Bradley* (*h*).

It will be noticed, that these resolutions exclude, altogether, any consideration of the Stamp Laws; which, indeed, were not in existence at the period when the case arose; nor do they refer to alterations made with the consent of all the parties; but, merely,

(*f*) Coke's Reports, part ii. page 26.

(*g*) 9 A. & E. 926; 1 P & D. 661.

(*h*) 11 M. & W. 590. See also page 186, *ante*.

to such as are made, without authority, by a person taking a benefit under the deed, or by a stranger.

Where all parties are consenting to an alteration, the original deed (at all events, if the alteration be a material one,) may, perhaps, be said to be, of necessity, vitiated, by reason of the former contract being put an end to, and a new one substituted; and, in such cases, the question of stamp duty interposes; but, independently of the Stamp Laws, the deed, as altered, is good. See *Zouch* v. *Claye* (*i*). *Pigot's case*, (which may be said to be a kind of starting point,) arose upon a bond; and the principles it establishes are thereby confined to deeds only; but they are of general application; and have been, since, extended to other instruments, although with some modifications. The instances in which material alterations may be said to be permitted, whether by any of the parties themselves, or by strangers, without affecting the instrument, seem to be, where the object is, merely, to correct a mistake; or, where the transaction is *in fieri*. How far this has been allowed, will be seen from the following cases.

Alteration by umpire in his award after completion.

Henfree v *Bromley* (*k*), which may be said to be somewhat at variance with *Pigot's case*, should be first alluded to. A matter was referred to an umpire, who was to make his award, *ready to be delivered*, by a certain day. On that day he made his award, directing the defendant to pay to the plaintiff 57*l.*; and gave it to his own attorney to deliver; but the same day, before it was given out, he struck his pen through the sum, and inserted 66*l.*, in order to include the defendant's share of the costs, which, it was understood, he would not pay. The defendant refused to obey the award, and two rules were obtained; one for an attachment, the other to set aside the award. The Court held, that when the umpire made the alteration the award was complete, and he was *functus officio;* but that there was no objection to the award as it originally stood, the alteration being no more than a mere spoliation by a stranger.

Alteration in an award by a stranger.

In a later case, where, in an award made by an umpire, in which he had mis-recited the Christian name of one of the arbitrators, the attorney corrected the error, and it was held to be immaterial. Mr. Baron *Bayley* observed, "though the alteration is said to have vitiated it, *and would have, assuredly, done so, had it been in a material part*, I am of opinion that this alteration, *by a stranger, in a*

(*i*) 2 Lev. 35. (*k*) 6 East, 308

part which I hold to be immaterial, leaves the umpirage as before it took place" (*l*).

Alterations to correct mistakes.

Even in the case of a bill of exchange, an alteration, by competent authority, is permitted, where the object is merely to correct a mistake, and to make the instrument in conformity with the original intention of the parties (*m*). And so, in the case of other instruments, the same indulgence is allowed.

Bills and notes.

Correction of misrecital of ship's register in bill of sale, allowed.

In a bill of sale of a ship, in reciting the certificate of registry, *Guernsey* was inserted, as the port where the certificate was granted, instead of *Weymouth;* which mistake was discovered when the deed was sent to the latter port to be registered; it was, then, altered and re-executed; and the Court held, that the alteration was the mere correction of a clerical error, for the purpose of making the instrument what it was, originally, intended to be, and that a new stamp was not necessary; that without such alteration the bill of sale was, under the 26 Geo. III. c. 60, absolutely null and void; and that it took no effect from its first delivery (*n*).

And of a mistake in a sea policy where the party had no interest in the thing first insured.

In *Sawtell* v. *Loudon* (*o*), a broker had been instructed to effect an insurance on *goods*, by a certain ship; but, by mistake, he effected it on the *ship*, in which his employer had no share. After the ship had sailed the error was discovered; and, on applying to the underwriters it was corrected, by a memorandum in the margin, stating the terms. The Court held that no new stamp was necessary; it was, clearly, a mistake, the original policy was only the semblance of a contract, it was no policy at all, since there was no risk. This case was distinguished from *Hill* v. *Patten*, where the insured was the owner, and was interested in the outfit.

Alteration in settlement by reciting the articles, and to correct the amount settled, not allowed.

The previous case of *Shaw* v. *Jakeman* (*p*) was attended with a different result. An agreement had been entered into before marriage, to settle certain stock of the husband's; after the marriage, a deed was made; in both instruments the sum was incorrectly stated, by mistake; and, in the latter, no mention was made of the articles. The deed was altered by reciting the articles, and correcting the error, and was re-executed. It was contended that the deed was absolutely void, that at all events it required a fresh stamp. The Court treated it as a destroyed instrument.

(*l*) *Trew* v. *Barton*, 3 Tyr. 559.
(*m*) See page 177, *ante*.
(*n*) *Cole* v. *Parkin*, 12 East, 471
(*o*) 1 Marsh. 99; 5 Taunt. 359.
(*p*) 4 East, 201.

It will not be necessary to point out the material difference between this case and those before mentioned, to show that they do not, in point of fact, conflict.

Immaterial alterations.

An alteration by a stranger, in an immaterial part, will not affect the instrument.

Declaration of interest in sea policy added.

Robinson v. *Touray* (*q*) is a case of unnecessary addition to a sea policy; by a declaration of interest, which did not affect the validity of the instrument. An error had been made in the name of the ship, and Lord *Ellenborough* observed, that it was a corrigible mistake, the correction of which did not require the assent of the defendant, nor render a fresh stamp necessary.

Title added to affidavit annexed to a plea

In *Prince* v. *Nicholson* (*r*), an affidavit annexed to a plea, and referring to it, was not entitled; the title was added, and the Court held that the affidavit was not thereby vitiated; it might be read without any title, being annexed to the plea, it was sufficiently identified.

The word "hundred" inserted in a bond.

Where, in a bond given to secure 100*l.* by six equal instalments, *viz.*, "16*l.* 13*s.* 4*d.* each year, until the full sum of one pounds be paid," the word "hundred," was inserted by a stranger; the Court held, that the passage would have been intelligible, from the context, if the alteration had not been made; that the alteration was perfectly immaterial, the legal effect being the same before, as it was after the alteration; and that, therefore, the instrument was not avoided (*s*).

Sold note altered by buyer.

A sold note in the following form, *viz.*: "Sold for *W.* & *C.*, 100 tons of crushed sugar (as per sample) in hogsheads," &c., was altered, by the buyer, without the privity of the seller, by adding, at the foot, the words, "of their own manufacture," with an asterisk, as a mark of reference, and a corresponding asterisk in the body of the note, after the word "sample," and within the parenthesis. It was held, that this was an alteration of the contract, in a material part, whether the additional word applied to the sample, or the bulk, and, therefore, vitiated the instrument. (*t*).

Immaterial alteration by both parties.

An immaterial, or an unnecessary alteration, made with the consent of both parties, appears to be put on the same footing as one made by a stranger.

In an agreement for a tenancy, shortly after it was made, the lessor of the plaintiff, with the consent of the defendant, made an

(*q*) 3 Camp. 157; 1 M. & S. 216.
(*r*) 1 Marsh. 71.
(*s*) *Waugh* v. *Bussell*, 1 Marsh. 311.
(*t*) *Mollett* v. *Wackerbarth*, 5 M. G. & S. 181; 11 Jur. 1065.

alteration in it, in an immaterial part, and it was considered by the Court that the instrument was not thereby vitiated (*u*).

Recital in warrant of attorney that the party is in custody not material.

In *Hartley* v. *Manson* (*x*), the defendant, being in custody, gave a warrant of attorney for the debt and costs, stamped with 20*s*. only; he was not described in it as a prisoner. On the following day, the defendant being then at liberty, the words, "but now a prisoner in the custody of the sheriff of Kent," were added by the plaintiff's clerk in the presence of the defendant, (who re-executed it,) and his attorney. On a motion for a rule to set aside the warrant of attorney, as invalid, the Court considered that it was good, as first executed; the words interlined not being essential, except to save the necessity of proof in case of proceedings (*y*); that the alteration was not in a material part, and that it was only to carry out the original intention. *Tindal*, C. J., asked, of what use would it be to grant a rule, when the parties might, pending the rule, get the warrant of attorney stamped? from which it will be observed, that, admitting the alteration to be material, the only question would be, the stamp duty.

Alterations allowed whilst matters *in fieri*.

Whilst the matter remains *in fieri*, an alteration may, in some cases, be made, without requiring a fresh stamp, or otherwise affecting the instrument (*z*).

Alteration of terms by indorsement on a deed before delivery.

A deed of covenant to pay an annuity, quarterly, was signed, but before the sealing and delivery, an indorsement was made, by which it was stipulated, that the payments should be half-yearly. The whole was held by Lord *Ellenborough* to be one transaction, done at the same time, and requiring one stamp duty only (*a*).

An agreement altered after partial execution.

An agreement signed by one party, but not finally concluded, and to which, at a subsequent meeting, a penal clause was added, and which was then signed by the other party, was held to be liable to only one stamp duty (*b*).

Obligor added to bail bond.

In *Matson* v. *Booth* (*c*) a bail bond was executed by the party arrested, and four sureties, a blank being left for the name of another; the bond was tendered to the undersheriff by one of the witnesses, who, with the assent of the undersheriff, added his own

(*u*) *Doe dem. Waters* v. *Houghton*, 1 Man. & Ry. 209

(*x*) 4 M. & G. 172; 4 Scott, N. R. 728.

(*y*) The recital of a party being in prison is *primâ facie* evidence of the fact, so as to show that *ad valorem* duty is not payable. See page 209, *ante*.

(*z*) See the cases relating to bills and notes, page 176, *ante*.

(*a*) *Lyburn* v. *Warrington*, 1 Stark. 162.

(*b*) *Knight* v. *Crockford*, 1 Esp. 189.

(*c*) 5 M. & S. 223.

name, as an obligor, and executed it. The Court held that this did not vitiate the bond, or render a new stamp necessary.

Blank for party's Christian name left in a letter of attorney, filled up.

Somewhat similar to this last case is that of *Eagleton* v. *Gutteridge* (*d*), where a letter of attorney was executed abroad authorizing ——— *Ree* to receive rents; on its reaching the hands of *Henry Ree*, for whom it was proved to have been intended, he inserted his Christian name; and the Court held that such alteration only carried out the intention of the grantor, and did not avoid the deed; but that it left a question as to the operation of the stamp-laws, which objection was not taken. There could have been no difficulty, in reference to the stamp laws, as it is quite certain, that even supposing the alteration to have vitiated the deed, it did not constitute a new one.

Condition filled up in bail bond.

But where, in the case of a bail bond, one of the bail, being in a great hurry, executed the bond before the condition was filled up, the penal part being only completed, the instrument was held to be void, by Lord *Ellenborough*, who observed, that certain solemnities were indispensable in the case of deeds (*e*).

After a deed has been, partially, executed, alterations, not relating to the interests of the parties who have executed, have been permitted to be made, as well as blanks to be filled up.

Blanks filled up in a mortgage, not affecting the parties who had executed.

A deed, by which a mortgagee reconveyed the mortgaged estate to the mortgagor, on payment of his money, and by which the mortgagor conveyed it to other persons, for securing an annuity, was executed by the mortgagee, blanks being left in that part of it which related only to the other parties; subsequently, and before the execution by the mortgagor, the blanks were filled up, and interlineations in the same part, made. The Court held that the execution by the first mortgagee was still valid; the whole deed might be considered as one entire transaction, operating as to different parties to it from the time of the execution by each, but not perfect till executed by all the conveying parties, that any alteration made in the progress of such a transaction, still left the deed valid as to the parties previously executing, provided the alteration had not affected the situation in which they stood. There was no authority (and it would be contrary to common sense if there was), which says that an alteration, so made, should avoid the deed (*f*).

Mistake in

Instructions were given for preparing a lease from *A.* to *B.* at

(*d*) 11 M. & W. 465; 2 Dowl. N. R. 1053.

(*e*) *Powell* v. *Duff*, 3 Camp. 181.

(*f*) *Doe dem. Lewis* v. *Bingham*, 4 B. & Ald. 672.

lease, not affecting the party who had executed, corrected.

the request of *C.*, *D.*, and *E.*, on whose direction *B.* was to grant underleases, (to secure ground rents to *A.* and *C.*), and, subject to such underleases, *B.* was to stand possessed of the lease in trust for *D.* and *E.* The lease was prepared, accordingly, and was executed by *C.*, *D.*, and *E.*, when it was discovered, that a piece of land had, by mistake, been, improperly, included in the description of the premises; and an alteration was made, with the consent only of *C.*, excluding such piece of land, in which *D.* and *E.* had no interest whatever; after which, *D.* and *E.* executed the lease. On a case sent from the Vice-Chancellor, the Court certified that the deed was valid, notwithstanding such alteration (*g*).

A blank in a deed of trust for creditors filled up.

In *Hudson* v. *Revett* (*h*), the defendant executed a deed of trust for the benefit of creditors, and, also, a deed of conveyance of the property to a trustee. At the time of the execution there were blanks in the trust deed, for the amount of several of the creditors' debts, but which were, then, all filled up, except one, the amount to be inserted in which was disputed, but it was agreed, that when the debt could be ascertained, by the production of certain vouchers, the amount should be inserted. The deed was, then, executed, with this blank in it, by the defendant and the creditor. On the following day, the defendant's solicitor, and the same creditor, attended the defendant, (in prison,) when the amount having been agreed to, the blank was filled up, the attesting witness not being present; no new stamp was added. The trustee executed it about a month after. The defendant, by various acts, subsequently treated the deed as a valid instrument. The Court considered that the deed was not, completely, executed, until the parties met the second day, and the sum was inserted (*i*).

Schedule added.

An assignment for the benefit of creditors was made between the debtor of the first part, the trustees of the second part, and "the several other persons whose names and the amount of whose debts were set out in a schedule thereto annexed, being creditors," of the third part. At the time of the execution by the debtor the schedule

(*g*) *Hall* v. *Chandless*, 4 Bing. 123; 12 Moore, 324.

(*h*) 5 Bing. 368.

(*i*) A question appears to have been raised as to the liability to *ad valorem* mortgage duty, which, from the remark of Lord Chief Justice *Best*, would seem to have reference to the other deed, the conveyance of the property. The trust deed, supposing it to come within the description of instruments charged with mortgage duty, would be exempt by reason of its being a security for more than five creditors; and the conveyance was, of course, in general terms, without specifying any particular creditors, or any definite sum or sums of money, and therefore no *ad valorem* duty could be chargeable upon it.

was not annexed, and the only schedule to the deed, on its being produced, consisted of the signatures of the creditors, some of which had been erased, while others had no sums set against them. It was contended that the deed was avoided by the addition of the schedule after it was executed by the debtor, and by the erasures in it. *Weeks* v. *Maillardet*, 14 East, 568, was referred to, in which a deed was held to be avoided by proof that a schedule stated in it to be annexed, was not, in fact, annexed until after the execution of the deed. But the Court considered that the deed was not avoided; in the case referred to the schedule was material to show *what* passed by the deed (*k*).

Release to witness altered at the trial.

In *Alten* v. *Farren* (*l*), the defendant had executed a release to a witness, but, before it was given to him, it was handed to the counsel on the opposite side, for his inspection, and the form being objected to, it was altered, and re-executed; the Judge (*Tindal*) holding that it did not require a new stamp, not having been delivered, absolutely.

Witness added to a release at the trial.

In another case, a release to a witness was executed, but remained in the hands of the releasing party until the trial, when, before it was delivered to the witness, it was altered by the insertion of the name of another witness, and re-executed; it was objected, that, before it was re-executed, it was a perfect deed, and that by the alteration a fresh stamp became necessary; but it was admitted; and, as held by the Court, on a motion for a new trial, properly so; it had not been delivered out of the custody of the party's attorney, and was only *in fieri*. Lord *Lyndhurst* observed, that whether one stamp would have been sufficient to release two persons might be well doubted, but that this objection was not taken at the trial (*m*). See page 335, *ante*.

Alteration in marriage settlement when partly executed at the meeting.

At a meeting of all the parties to a marriage settlement, the father of the intended husband, (the only conveying party,) executed the deed; but, before any of the other parties executed it, the father of the lady objected to a clause, which contained a power of revocation by either the husband or the wife; and, in consequence of such objection, the clause was struck out, and the husband's father re-executed the deed; which was then, also, executed by the other parties. The Court held that the execution was

(*k*) *West* v. *Steward*, 14 M. & W. 47.

(*l*) 5 C. & P. 513.

(*m*) *Spicer* v. *Burgess*, 1 C. M. & R. 129; 2 Dowl. 719; 4 Tyr. 598.

only *in fieri;* and was not so far complete as to make a new stamp necessary (*n*).

Indorsement on bond made before execution, fixing the rate of interest.

In a case relating to Southampton Old Pier Bonds, payable with interest not exceeding 5*l. per cent.*, a memorandum was indorsed on one of such bonds, consenting to accept 4*l. per cent.*; and it appearing to have been made before the bond was signed, the Court considered the whole as one transaction. Mr. Justice *Coltman* observed, that a bond could not be put an end to by a parol contract; but that, in this case, the contract was made at the same time, and Chancery, at all events, if not law, would compel the obligee to take 4*l. per cent.* (*o*). No allusion was made to the Stamp Acts.

Return of latitat extended.

With cases of this description may be mentioned those of *Durden* v. *Hammond* (*p*), and *Ex parte Sawyer* (*q*), of earlier date. In the former, a latitat, issued and returnable in Trinity Term, was, before the return, altered, by extending the return several times, and, by the last alteration, was made returnable on the 28th November; it was not re-stamped. The Court held, that the rule was, that before a writ was returnable, it might be altered and re-sealed, as in this instance, without being stamped anew, provided that no term intervened between the teste and the ultimate return. In *Ex parte Sawyer*, a bankrupt's certificate was permitted to be altered, without affecting the stamp, after receiving the signatures of several creditors, it not being complete until allowed by the Lord Chancellor.

Bankrupt's certificate altered.

Seals added.

Putting seals to the signatures, thereby converting an agreement, under hand only, into a deed, is such an alteration as avoids the instrument (*r*). In this case, the defendant pleaded the alteration specially, and the plea was held to be good.

Transfer of shares in a public company must be complete before signed or it is void, and the seller is liable for calls.

The proprietors of shares in public companies, should be, especially, careful, to see that the instruments, by which they transfer their shares, are filled up with the purchasers' names. If a transfer be signed in blank, it is wholly inoperative, and cannot by the insertion of a name be afterwards made available; nor is the vendor, as far as the company is concerned, divested of his interest, and he, consequently, remains under all the habilities of a shareholder; he should not, therefore, be induced, by any represen-

(*n*) *Jones* v. *Jones*, 1 Cro & M. 721; 3 Tyr. 890.

(*o*) *Keele* v. *Wheeler*, 13 L. J. R. (N. S.), C. P. 170.

(*p*) 1 B. & C. 111.

(*q*) 17 Vesey, 243.

(*r*) *Davidson* v. *Cooper*, 11 M. & W. 778; 13 L. J. R. (N. S.), Exch. 276.

tion of the broker, or otherwise, to submit to the dangerous practice of signing a blank transfer; at all events he should take care to have an express contract of indemnity from the person to whom he sells (*s*).

The plaintiff, in *Hibblewhite* v. *M'Morine* (*t*), contracted to sell shares in a railway, to the defendant, and to transfer and deliver them on or before a given day; on which day he produced a blank transfer, executed by the person of whom he had himself bought shares, but without a purchaser's name, and offered to insert the name of the defendant, who refused to accept the transfer. The Court held that this could not be done; there was no case that showed that an instrument, which when executed, is incapable of having any operation, and is no deed, can, afterwards, become a deed, by being completed and delivered by a stranger, in the absence of the party who executed it, and unauthorized by instrument under seal. "In truth," observed Mr. Baron *Parke*, "this is an attempt to make a deed transferable, and negotiable, like a bill of exchange, or Exchequer bill, which the law does not permit."

Circumstances justifying alteration must be proved.

Transfer of shares.

Where the circumstances will justify an alteration the party producing the deed must prove the facts. A deed prepared for the purpose of transferring shares in a Joint-stock Company, from *Flood* to *Howell*, was executed by the former, he receiving the purchase money from *Howell's* brokers who had negotiated the purchase; it was not executed by *Howell*, but was brought back to *Flood* by the brokers, by whose direction, and with the consent of *Flood*, the name of *Howell* was struck out, and that of the defendant inserted, and it was then re-executed by *Flood*; no fresh stamp was impressed; it was also executed by the defendant. For the validity of the deed it was contended, that, by the Company's Act, the execution by the purchaser was necessary to complete the instrument; that when the alteration was made the matter was *in fieri;* and that the seller had a right to correct the mistake, by inserting the name of the real purchaser. But the Court held, that admitting that such alteration might have been

(*s*) The serious consequence to a vendor, of the practice of signing blank transfers, is exhibited in the case of *Humble* v. *Langston*, 7 M. & W. 517. The plaintiff sold some railway shares to the defendant, and signed a blank transfer; after the sale, calls were made on the shares, which the plaintiff was obliged to pay, and he brought his action for the amount against the defendant, but the Court held that he could not recover without an express contract to indemnify.

(*t*) 6 M. & W. 201.

made without destroying the validity of the instrument, under such an assumed state of facts, yet it was incumbent on the plaintiff, who produced and relied upon the deed, in its altered state, to show the circumstances under which the alteration was made, and that such a state of facts really existed; for that, independently of any effect to be given to it by the execution of the purchaser, the deed could have an operation at common law, whereby the power of the stamp would be exhausted (*u*). See also page 189, *ante*, as to the necessity for proving the circumstances under which an alteration is made in a bill or note.

Bills and notes.

A vitiated instrument may be admitted to show that an estate passed by it; and also to prove a collateral fact.

A vitiated deed, although its operation is altogether at an end, may, nevertheless, be received in evidence to show that an estate passed by it. See *Doe dem. Beanland* v. *Hirst* (*x*), where a deed of conveyance, made void by an alteration, was given in evidence in support of the title of the lessors of the plaintiff.

So, also, to prove a collateral fact, as in *Hutchins* v. *Scott* (*y*), where the Court held, that there was no occasion to refer to the general question, as to an instrument being avoided by a subsequent alteration; that no case had gone so far as to show that when a deed is vitiated it ceases to be evidence altogether. And, in *Sutton* v. *Toomer* (*z*), a bill of exchange, given as a security, for money deposited with a banker, but vitiated, as a security, by an alteration made in it as to the rate of interest, was allowed to be given in evidence, to prove the terms on which the money was deposited, evidence of the deposit having been given. See also *Gould* v. *Combs* (*a*).

An instrument *functus officio* cannot be revived.

When an instrument has performed its office, and may be said to be *functus officio*, it cannot be revived and made use of again, for a similar purpose, without being re-stamped.

Where an annuity is redeemed the deed cannot be used for a second loan without a new stamp.

In *Hammond* v. *Foster* (*b*), the defendant, in December, 1789, granted to the plaintiff, an annuity, which, in May following, he redeemed, under a clause, to that effect, contained in the deed, paying the money to the plaintiff's attorney. In July, he applied for a second loan, to the attorney, who said he had the former money in his hands, which he would advance on having the deed re-delivered to him, which was done. The deed was objected to on two grounds; First, that the transaction was a new one, and required a fresh stamp; and, Secondly, that a new

(*u*) *The London and Brighton Railway Company* v. *Fairclough*, 2 M. & G. 675; 3 Scott, N. R. 68.
(*x*) 3 Stark. 60.
(*y*) 2 M. & W. 809.
(*z*) Page 133, *ante*.
(*a*) Page 161, *ante*.
(*b*) 5 T. R. 635.

memorial was necessary. Lord *Kenyon* said, This is not a mere irregularity; the re-grant was substantially a new transaction; and, on both grounds, a rule absolute, for setting aside the annuity, was granted.

So far as the stamp duty was concerned, this might have been set right by getting the deed stamped afresh.

A note paid off cannot be again used.

In *Bartrum* v. *Caddy* (*c*) a note, given as a security, and paid and delivered up, and which was, afterwards, again deposited as security for another debt, was held to have been discharged when so paid, and incapable of being again made use of.

Affidavits re-sworn for a second purpose required to be re-stamped.

In *Chitty* v. *Bishop* (*d*), affidavits were used on an application to stay proceedings made to a Judge at chambers, who referred the party to the Court; the affidavits were re-sworn, but not re-stamped, and on the motion being made they were objected to, on the ground that they had fulfilled the object for which they were intended, and that, therefore, new stamps were requisite; no perjury could be assigned on them, as there was no stamp to the new jurat. The Court held the objection to be good and refused to admit the affidavits.

VI. The proper Time for objecting to the Admissibility of an unstamped Instrument in Evidence.

IN ORDER to render the objection to an instrument, for want of a stamp, available, care must be taken that it be advanced in due time; it is important, therefore, to consider the exact period at which the objection ought to be made, and the form in which it may be raised.

Objection must be taken before the instrument is read.

Where a writing, upon the face of it, is liable to a stamp duty, the want of a stamp must be objected to before the contents have become known to the jury; it is too late to take the objection when the document has been read, although the omission to do so might have arisen from accident, or inadvertence. This was the case in *Foss* v. *Wagner* (*e*), where an agreement, which the defendant's counsel requested to see, was, whilst the attention of counsel was called off, put in and read, without his observing it; the learned Judge who tried the cause, and subsequently, the Court of King's Bench, held that the objection, afterwards made to it, came too late.

(*c*) Page 170, *ante*. (*d*) 4 Moore, 413
(*e*) 7 Ad. & E. 116, note.

Latent objections may be made by way of defence.

This rule does not, however, apply to the case of a latent objection, where the document is, apparently, exempt from duty, but is, nevertheless, in reference to some extrinsic matter, liable to it. In cases of this kind the objection is available by way of defence.

Post-dated checks.

Thus, in an action of assumpsit, against the drawer of a check on a banker, the plaintiff having proved the check, the defendant proposed to show that it was post-dated, and, therefore, not within the exemption in favour of such instruments; but it was insisted, that the objection to it should have been taken when the check was put in, and not by way of defence; the Court, however, held that where the defect did not appear on the face of the instrument, it was the subject of defence, by proof (*f*). On the trial, the learned Judge was of opinion that the objection ought to have been pleaded, but this was, also, overruled by the Court, on the motion for a new trial.

The same was likewise determined in *Jones* v. *Fort* (*g*).

The defendant cannot defeat the plaintiff's case by showing the existence of an unstamped agreement.

Where the plaintiff has closed his case, without the fact of the existence of a written instrument transpiring, it cannot be defeated by its being shown, in the evidence for the defendant, that a written agreement, whether it be stamped or unstamped, is in existence (*h*).

See, also, *The King* v. *Rawdon* (*i*); where, on an appeal, the appellants having, by parol evidence, shown a settlement, the respondents were not permitted to alter that case, by proving other facts, without producing the agreement to which it appeared, on cross examination, they related.

And if he produce the agreement he must prove it.

Nor can the defendant, by producing an unstamped agreement in any such case, affect the plaintiff's position; it lies upon the defendant to prove the written contract This was, unsuccessfully, attempted in *Fielder* v. *Ray* (*k*), where the plaintiff, the action being for work and labour, &c., having established his case, by means of parol evidence, the defendant insisted, that, during the progress of the work, the plaintiff had signed an agreement, altering the original terms; and he produced the agreement, which, for want of being stamped, could not be read; and the plaintiff had a verdict. On a rule for leave to enter a nonsuit, it was argued, that there being a written agreement, the plaintiff ought to have

(*f*) *Field* v. *Woods*, 7 Ad. & E. 114; 6 Dowl. 23; W. W. & D. 482.
(*g*) 1 M. & M. 196.
(*h*) *Stevens* v. *Pinney*, 8 Taunt. 327; *Marston* v. *Dean*, 7 C. & P. 13.
(*i*) 8 B & C. 708.
(*k*) 6 Bing. 332.

proved it, or have been nonsuited; but the Court held that it was incumbent on the defendant, if he sought to alter the plaintiff's case, to prove the written agreement.

Again, on the trial of an ejectment, the plaintiff having proved the tenancy, the defendant's counsel offered in evidence a written unstamped paper, containing the terms of the tenancy, signed by the defendant, produced by the plaintiff's attorney on notice; and contended, that such production was quite sufficient to show that the plaintiff had not offered the best evidence; but the Judge, and afterwards the Court of Queen's Bench, on a motion for a new trial, held, that the defendant, to render the document available, was bound to make it evidence in the regular manner, and that, for want of a stamp, it was not admissible (*l*).

The objection must be taken at the trial.

If the objection be not taken at the trial, it cannot be insisted on afterwards, on a motion for a new trial, or any other purpose.

On the trial of an ejectment, an instrument, stamped as an agreement, was given in evidence for the defendant, and it was found necessary to insist upon it as a lease, which the Judge held it to be, and a verdict was returned for the defendant, no objection being then made to the want of a lease stamp. On a motion to enter a verdict for the plaintiff, pursuant to leave reserved, the insufficiency of the stamp was urged, but the Court held that the objection on that head came too late, it should have been made at the trial, when the instrument was set up as a lease (*m*).

On a trial by order of a Court of Equity an objection for want of a stamp not allowed.

A bill was filed on the equity side of the Court of Exchequer, in Ireland, for an injunction to stay the proceedings in an ejectment cause, alleging an accepted proposal for a lease. On a motion for the injunction it appeared, that the term in the proposal was written on an erasure; and the Court directed the action to proceed, the question on the trial to be, whether the instrument was genuine, or not. On the document being produced at the trial it was objected to for want of a stamp, but the Judge admitted it, considering that the order precluded the objection. On a motion, afterwards made, in the action, the Court held that the matter was wholly with the Court of equity, where the question might be dealt with (*n*).

The objection cannot be made

On the execution of a writ of inquiry after judgment by default, in an action of assumpsit on a promissory note, the note, when

(*l*) *Doe dem. Franks* v. *Franks*, 11 A & E 795; see also *Magnay* v *Knight*, 2 Scott, N. R 67.

(*m*) *Doe dem Philip* v *Benjamin*, 9 A. & E. 664; 1 P & D. 440.

(*n*) Lessee of *Harding* v *Macnamara*, 4 Ir L. R 191

on a writ of inquiry.

produced, appeared to be on an insufficient stamp, and the under-sheriff told the Jury they could not look at it, and that, therefore, as they could not find for the defendant, they must assess the smallest amount of damages; but they found the full amount of principal and interest; and, on a motion to set aside the inquisition, the Court held, that they had done right; they had only to look at the date and calculate principal and interest (*o*).

If the objection be not made on obtaining a rule it cannot be relied on afterwards.

On an application to set aside an award, for any cause, if an objection, in reference to the stamp duty, be not alleged as a ground for obtaining the rule, the Court will not suffer it to be relied upon afterwards, when cause is shown (*p*). It may, however, be observed, that the want of a stamp is not a sufficient ground for setting aside an instrument. See page 289, *ante*.

In bankruptcy, objection for want of a stamp not made on proving the debt, not allowed on a petition to expunge proof.

At the hearing of a petition in bankruptcy, to expunge the proof of a debt made by the holder of a promissory note, an objection to the proof was raised, on the ground that the note was not stamped; but the form of the note, and the case made by the petitioner, appearing sufficiently upon the petition, and no notice having been served upon the respondent to produce the note, the Court refused to entertain the objection (*q*).

A consent to an order to admit a document does not preclude an objection as to the stamp.

The consent to a Judge's order for the admission of a document, with the usual saving, does not preclude the party from objecting to the want of a stamp.

In *Vane* v. *Whittington* (*r*), which was an action, in the Exchequer, by the drawer, against the acceptor of a bill, the defendant's handwriting was admitted under a Judge's order. It was, on motion, contended on the authority of a learned writer (*s*), that after a consent so given, an objection cannot be taken to the insufficiency of the stamp; but the Court held, as did Mr. Baron *Rolfe*, at the trial, that there was nothing in the objection; the summons calls upon the party to admit certain documents, "saving all just exceptions to the admissibility of such documents as evidence in the cause;" the defendant only admits the handwriting. It seems, however, that it is not open to a party, thus consenting, to object to the admission of an instrument, by reason of an erasure in it, the same learned Judge (Mr. Baron *Rolfe*) having, previously, so held in *Poole* v. *Palmer* (*t*). And, in *Doe dem. Wright* v.

(*o*) *Watson* v. *Glover*, 12 L. J. R. (N. S.) C. P. 184.

(*p*) *Liddell* v. *Johnston*, 2 Tidd's Practice, 844.

(*q*) *Re Clarke, ex parte Christie*, 8 Jurist, 919.

(*r*) 2 Dowl. 757.

(*s*) Starkie on Evid. vol. 3, p. 1035, 3rd edit.

(*t*) 1 Car. & M. 69.

Smith (*u*), a consent to a Judge's order to admit an instrument, as a counterpart, was held to preclude an objection that it was an original, and required, therefore, a higher stamp than that impressed upon it.

The party taking a latent objection must prove his case.

It is, of course, incumbent on the party taking the objection of want of a stamp, where the defect is not apparent on the face of the instrument, to prove the facts upon which his objection rests; as in *Waddington* v. *Francis* (*x*); where it was asserted, that, at the time of signing a paper, other signatures were attached, which involved the payment of further stamp duty.

See page 292, as to the time when the instrument must be stamped on applications in ejectments under the 1 Geo. IV. c. 87.

VII. The Power of enforcing the Production of an Instrument to be stamped.

AN INSTRUMENT, although coming out of the hands of the opposite party, and by whose default it was unstamped, and under whatever circumstances it may have got into his possession, or may be produced, must, if it be liable to stamp duty, be stamped before it can be read; notwithstanding the person, on whose behalf it is required to be read, be no party to it, and could not be aware, until it was produced, that it was not stamped (*y*). Nor will the Court set aside a nonsuit, on the ground of surprise, where the plaintiff's case was defeated, on the trial, by the unexpected production of an unstamped written document (*z*).

Thus it behoves a party, if he knows, or has reason to believe that an instrument, in the hands of his opponent, which is essential to his case, is unstamped, to take care that it is duly stamped before the trial, by obtaining an order of the Court, or a Judge at chambers, for the purpose. Such an order, however, is not a matter of course, in all cases.

Where the holder is a trustee for the other.

Where the party holding the instrument is a trustee of it for the other, the order is quite of course. This is the case where only one part is signed by both parties, which is kept by one of them (*a*).

(*u*) 2 Jurist, 854.

(*x*) 5 Esp. 180.

(*y*) *Doe dem. St. John* v. *Hore*, 2 Esp. 724.

(*z*) *Reid* v. *Smart*, Chitty's Stamp Laws, 3rd edit. 93. From the report of this case, however, it is to be inferred that the Court would have interfered, if it had been shown that the Statute of Limitations would run.

(*a*) *Blakey* v. *Porter*, 1 Taunt. 386; *King* v. *King*, 4 Taunt. 666; *Blogg* v. *Kent*, 6 Bing. 614.

A case is mentioned where the party having the custody of an instrument was, on the application of the other party, on affidavit, stating that he had no duplicate original, ordered to produce it to the Commissioners to be stamped, and to give a copy, and produce the original on the trial (*b*).

A case in the Court of Chancery is, also, referred to, where the solicitor for the vendor, on an application made on behalf of the purchaser, was directed to produce, in order to be stamped, the agreement for sale, which had been sent to him by his client with instructions, contained in a letter written at the foot, to prepare a more formal contract (*c*).

Order to produce the draft but not the engrossment, executed by the plaintiff only, the defendant having refused to execute because it differed.

An action was brought for compensation, for breach of an agreement to take the plaintiff into partnership. A draft of the intended articles was prepared by the defendant's attorney, and perused and settled by the plaintiff, and returned; an engrossment, also, was made, and was executed by the defendant, and retained by him. On a rule, obtained by the plaintiff, for leave to inspect and take copies of the draft, and the engrossment, cause was shown, that the deed differed from the draft, and that the plaintiff refused to execute it; the Court considered that the deed was repudiated by the plaintiff, and, therefore, that the defendant did not hold it as a trustee; but that it was otherwise as to the draft (*d*). The object sought, in this instance, it will be observed, was an inspection, for which a somewhat stronger case may be said to be required, than for stamping.

Where kept by a third person.

So, the Court will, as of course, make an order for the production of an agreement, to be stamped, which is kept by a third person, for both parties; as in the instance of a contract on a sale by auction, deposited with the auctioneer (*e*).

Where there are two parts the holder of one is not a trustee for the other.

The rule, that the party who has an instrument in his possession is a trustee for the other party, and shall produce it to be stamped, does not apply where there are two parts.

In the case of a charter-party, in two parts, one kept by each party, the plaintiff having lost his, the Court discharged a rule to show cause why the defendant should not produce his copy, holding that it was not the case where he was a trustee (*f*).

In *Travis* v. *Collins* (*g*), the plaintiff was the purchaser of a mill,

(*b*) *Cooke* v. *Stocks*, Chitty's Stamp Laws, 95; Tidd, 9th edit. 487, 590.

(*c*) *Fowle* v. *Freeman*, Sug. Vend. and Pur. 75.

(*d*) *Ratcliff* v. *Bleasby*, 3 Bing. 148.

(*e*) *Gigner* v. *Bayly*, 5 Moore, 71.

(*f*) *Street* v. *Browne*, 1 Marsh. 610.

(*g*) 2 Cromp. & Jer. 625; 2 Tyr. 726.

which had been burned down, and he brought an action against the defendant, who had taken the mill, as tenant, from the vendor, undertaking to keep it in repair; the Court discharged a rule to show cause why the defendant should not produce the agreement, in his possession, to be stamped. Subsequently, a motion was made for leave to stamp a copy, and that the defendant should be precluded from producing the original at the trial. It appeared that two parts were prepared, one for the vendor, which should have been in the possession of the plaintiff; the Court said, that if only one part had, originally, existed, they would have ordered it to be produced to be stamped; and if it had been found, that, for the purpose of evading the order, the instrument had been destroyed, they might have ordered a copy to be stamped; but whether such order would have made a copy admissible in evidence would have been doubtful; the rule, that the party having the custody of an instrument shall produce it, did not apply where there were two parts.

In *Lord Portmore* v. *Goring* (*h*), a rule was discharged for the defendant to give the plaintiff oyer, and a copy of his lease, proof not being given that a counterpart was not in existence; although it appeared that neither a counterpart, nor a copy, was in the plaintiff's possession.

And, in *Woodcock* v. *Worthington* (*i*), the Court refused a rule to show cause why the plaintiffs should not be at liberty to inspect, and take a copy of a counterpart of a lease in the defendant's possession.

Where the party does not seek an inspection.

But in *Neale* v. *Swind* (*k*), where two parts of an instrument, (a lease, or an agreement for a lease,) had been executed, but the plaintiff had lost his part, the Court refused to rescind an order, which had been made by one of their Lordships, to produce the other part to be stamped, the plaintiff not seeking an inspection.

The necessary inference from the decision in *Neale* v. *Swind* is, that the Court will distinguish between the case of a production for the purpose of inspection, as well as stamping, and that of a production in order to stamping only; but the distinction does not appear, from the reports, to be, sufficiently, established. There is nothing stated in the report of *Travis* v. *Collins* to lead to the belief that the plaintiff sought an inspection, and yet the Court refused to order the production. That was the case of a person

(*h*) 4 Bing. 152.
(*i*) 2 Y. & J. 4.
(*k*) 2 Cro. & Jer. 278; 2 Tyr. 318.

having a direct interest in the agreement, and claiming under one of the parties to it. Not in such a case, only, however, would the distinction seem to be reasonable; but in any case, where it is known that an instrument exists, the admission of which, in evidence, may become a question at the trial; or which may then be produced, as the best evidence of a fact to be proved by the opposite party, but which cannot be read when produced, for want of a stamp. What objection there can exist to an order for stamping an instrument, under such circumstances, is not very apparent; seeing that an inspection is guarded against; and that the charge of the duty, and all expenses attending the affixing of the stamp, must be borne by the person seeking to have the stamp impressed: on the contrary, a great hardship is cast upon an innocent party, to whom justice is totally denied, where he is not, in the slightest degree, chargeable with any fraud, or any neglect, or omission whatever; but who is, wholly, precluded from establishing his right, by the misconduct of other, interested parties, who profit by their own wrong; which misconduct there can, so far as any of such parties are concerned, be no valid reason urged against his taking means for remedying. The making of an order for stamping a document, in any such cases, does not impose upon the party having the custody of it the necessity for producing it at the trial; nor establish the right to have it read; but, merely, prevents it from being rejected, when produced, for want of that, to which, by law, it is liable. Any supposed difficulty as to determining what stamp may be required, arising from the party's not being permitted to inspect the document, affords no objection to the order. The party should be allowed to elect between the risk of the total want of a stamp, and that of an insufficient one. It is to be presumed, however, that in most instances, he is sufficiently aware of the nature of the instrument, to be enabled to form a correct opinion upon the point. Moreover, the officer at the Stamp Office will take care to exercise his judgment upon it. See Mr. Justice *Wightman's* remark in *Hall* v. *Bainbridge*, *post*, p. 380.

Where the person seeking to have a stamp impressed is not a party to, nor interested under the instrument.

This peculiar hardship is practically shown in the cases of *Taylor* v. *Osborne* (*l*), and *Lawrence* v. *Hooker* (*m*). In the former, the Court refused the plaintiff an order to produce an agreement of partnership, between the defendant and a third person, to be stamped. Bills had been issued in the names of *Osborne & Co.*, and the action was brought against the defendant, as the survivor;

(*l*) 4 Taunt. 159. (*m*) 5 Bing. 6.

and to prove the partnership, the document was necessary. In a former action the plaintiff had been nonsuited, by reason of the agreement, when produced, not being stamped. It does not appear that the plaintiff desired an inspection, indeed that was not necessary, for the agreement had been, already, produced. In *Lawrence* v. *Hooker*, a rule to show cause why an agreement in the hands of the defendant, entered into between the defendant and a third person, and which, in some way, related to the subject-matter of the action, should not be produced to be stamped, was refused; the Court thinking it would be dangerous to interfere thus with the rights and liabilities of third persons; and suggesting the case of a party, who might, innocently, have entered into an illegal agreement, and have abandoned it upon discovering its illegality. Here, too, no inspection was sought, at least none appears, from the report, to have been required.

Where a person is not a party, but is interested in the instrument.

But the Court will interfere on behalf of a person who has an interest under an instrument, although he is no party to it.

In *Bateman* v. *Phillips* (*n*), the defendant had signed an undertaking to be accountable for the payment of notes issued by the Milford Bank, to the extent of 30,000*l.*; which would be an additional security to the public. Copies were printed of this notice, but the defendant obtained possession of the original; and the Court, considering that the plaintiff had an interest in it, directed it to be produced, in order to be stamped. Mr. Justice *Heath* observed, that the rule was too strict in limiting the production to a party only, and instanced several cases, where persons had strong interests in documents to which they were no parties.

Mandamus to produce an assignment of an indenture to be stamped in a settlement case, refused.

In *Rex* v. *Westoe* (*o*) the Court refused a mandamus, pending an appeal in a settlement case, to oblige the officers of a township to produce, to the Commissioners of Stamps, an indenture of apprenticeship, in order that an assignment of the pauper, indorsed thereon, might be stamped, so that it might be given in evidence on the appeal. Counsel relied upon its being a public document, which the Court did not consider it.

In an action by the patentee of a steam-engine invention against a Steam Navigation Company, to whom he had granted licence to manufacture and use engines, paying, besides a stipulated sum, a further sum per horse-power for every engine made, the plaintiff applied to have a letter, written by the company to third parties,

(*n*) 4 Taunt. 157.
(*o*) 5 Ad. & E. 786; 1 Nev. & P. 222; 2 H. & W. 446.

with whom they had contracted for the manufacture of two engines, produced to be stamped. It was objected that the plaintiff had no interest in the document; but Mr. Justice *Wightman*, sitting in the Bail Court, was of opinion that he might be considered to have an interest in the latter, although he had none in the subject-matter of it; and it did not appear how the rights of other parties could be affected by granting the application, which was not for the purpose of procuring a copy, or an inspection of the letter, but, merely, to have it stamped; this distinction was taken in *Neal* v. *Swind*, which was decided subsequently to *Lawrence* v. *Hooker*, and appeared to his Lordship to have proceeded on sound principles (*p*).

A copy of a copy ordered to be stamped.

See *Bousfield* v. *Godfrey* (*q*) where, at the instance of a party to the agreement, the Court ordered a copy of a copy to be stamped, and prohibited the production of the unstamped original to defeat the plaintiff's case. But see, also, *Rippiner* v. *Wright* (*r*), where parol evidence was refused, of an agreement, which the adverse party had forcibly possessed himself of, and destroyed, before it was stamped.

Where a copy is ordered no objection is to be made to the stamp on the original.

It was observed by Mr. Justice *Park*, in *Price* v. *Boultby* (*s*), that where a copy of an agreement, sued upon, is delivered to the defendant, in pursuance of a Judge's order, the Judge will, in general, make it a part of the order that the defendant shall consent to make no objection to the stamp.

If any such practice as this exists, the writer takes leave, with great humility, to express the doubt he feels as to the strict propriety of it, in reference to the interests of the revenue. Nor does he conceive that, as between the parties, themselves, there is sufficient reason for pursuing it. The question of stamp duty is not one between the parties to an instrument alone, if at all; the Crown is concerned in it, of whose interest the Judges are constituted especial guardians; it being in express contravention of law to admit in evidence an instrument not properly stamped; and if it be wrong to receive an instrument, open to an objection, judicially brought to the notice of the Court, for want of a stamp, *à fortiori* it cannot be right in a Judge to stipulate with any party, under any circumstances, terms that shall, in fraud of the revenue, shut out the objection, any more than he would impose upon him a condition

(*p*) *Hall* v. *Bambridge*, 14 L. J. R. (N S) Q. B. 289.
(*q*) Page 317, *ante*.
(*r*) *Ibid.*
(*s*) 1 C & P. 466.

not to advance any other objection to the admission of the instrument, on any grounds, whatever.

A learned Judge (*t*), on one occasion, expressed much indignation, on finding that the parties themselves had agreed that an instrument should be read without being duly stamped; characterizing such an agreement as a conspiracy to defraud the revenue. If a charge of this kind had any foundation, what can be said in favour of the practice alluded to? See, also, what was said in *Bennison* v. *Jewison*, *ante*, page 168.

As to the right to object to the want of a stamp on an instrument admitted under a Judge's order, see *Vane* v. *Whittington*, p. 374, *ante*. And as to presuming an instrument to be stamped, where it is not produced, on notice given, or is proved to be lost, see the cases at p. 314.

It is not usual for Judges, themselves, to take objection to the want of stamp duty, but if the fact be brought before them, in any mode, it is incumbent on them to take notice of it. See *Hill* v. *Slocombe* (*u*), where the officer of the Court had objected to draw up a rule on an unstamped instrument, and the Court held that they were bound to consider the question, thus, before them.

Party not to be obliged to subject himself to a prosecution under the Stamp Acts.

In compelling a party to exhibit evidence to which the other is entitled to have access, the Court will not oblige him to lay himself open to a prosecution under the Stamp Acts. In *Whitaker* v. *Izod* (*x*) an attempt had been made to obtain from the plaintiff a book containing entries of the payment of moneys made to himself by the defendant, with a view to a prosecution for penalties at the instance of the Commissioners of Stamps; it being assumed, (although, erroneously, as the book was kept by the plaintiff,) that such entries were receipts, chargeable with duty. The Court ordered the book to be delivered to the defendant's attorney, upon his undertaking that it should not be shown to the defendant, or to any officer of stamps, nor any copy be made of it; and directed the plaintiff to give stamped receipts for the sums specified, and that the book should be returned when the receipts were delivered.

(*t*) Page 296, *ante*. (*u*) Page 294, *ante*
(*x*) 2 Taunt. 115.

VIII. Matters relating to Special Pleading in reference to Stamp Duties.

THE Stamp Duties do not, in any instance, render special pleading necessary. In ordinary cases of actions on instruments liable to stamp duty, the defence, resting on a plea of want of a stamp, supposing such a plea to be good, would not be available, as it would, of course, be defeated by procuring the proper stamp to be impressed; but this cannot happen where the instrument is not allowed to be stamped after it is made; as in the case of bills of exchange and promissory notes, in reference to which all the questions of special pleading, relating to stamp duties, have arisen.

In *Bradley* v. *Bardsley* (*y*), where the defendant pleaded an alteration in a note without a re-stamping, it was said by Mr. Baron *Parke*, that if the Stamp Laws could be pleaded in bar of an action, it could only be in cases where the instrument was not capable of being made good, by being stamped before trial; and the plea was held insufficient in not showing that the case was one in which the note was not permitted, by law, to be stamped.

Plea of want of a stamp on a bill or note unnecessary.

It does not, clearly, appear, that a plea of want of a stamp on a bill, or note declared upon, would not be good; but some difficulty might, perhaps, be found in framing it; and the experiment would be dangerous, and wholly unnecessary, as the defect may be taken advantage of in the defence, on any plea putting the acceptance of the bill, or the making of the note in issue.

Instance of such a plea insufficient.

In *Haward* v. *Smith* (*z*), which was an action on a bill of exchange, the defendant pleaded that the bill was not, at the time it was made, nor at any time since, duly stamped with any proper stamp, denoting that the lawful, requisite, and proper rate or duty, has been, or was, duly stamped thereon. The Court held that the plea was insufficient, in reference merely to the observation of counsel, that if the bill had been stamped with a higher amount of duty than the statute imposed, it would have been valid, though the stamp would not have been the proper one.

Plea that bill stamped with old die.

In an action by an indorsee against the acceptor of a bill, the defendant pleaded, that the bill was written on paper stamped with an old die, in contravention of the 3 & 4 Will. IV. c. 97, s. 17;

(*y*) 15 L. J. R. (N. S.) Exch. 115. (*z*) 4 Bing N. C 684.

but the Court granted a rule to strike out the plea as wholly unnecessary (*a*).

But the defence that a bill has been re-issued, after payment, without being re-stamped, ought to be specially pleaded.

Where a bill is re-issued after it has been paid the facts must be pleaded.

In an action by an indorsee against the acceptor of a bill, drawn by, and payable to the order of *A.*, the defendant pleaded that he accepted the bill for the accommodation of *A.*; that the bill was liable to stamp duty; that after he had accepted it, and before it was indorsed to the plaintiff, it was negotiated by *A.*, for his own use; and, that before the indorsement to the plaintiff, it was paid by *A.*, and delivered up to him paid, and satisfied; and afterwards, without having been re-stamped, or the payment of any stamp duty in respect of the re-issuing, was indorsed by *A.* to the plaintiff; of all which the plaintiff had notice. This plea was, on demurrer, held to be good (*b*). But the judgment proceeded not so much, (if at all,) in reference to the stamp duty, as on the ground, that although a *bonâ fide* bill is negotiable till paid by the acceptor, and may be re-issued, if paid by the drawer before it is due, payment of an accommodation bill, by the drawer, discharges it, altogether; as he stands in the place of an acceptor; and is the person ultimately liable to the bill, which has done its work when it is paid by him. In this case, the question would have been one purely of stamp duty, if the bill had been issued as a fresh bill, with consent; but advantage might, it is presumed, have been taken of the defence on this ground, on a plea of non-acceptance.

The defence that an instrument has been altered (where the stamp duty is not concerned) must be pleaded.

So, a defence that an instrument has been altered must be pleaded, where the Stamp Act is not in question. In an action of assumpsit (*c*), on a guarantee, the defendant pleaded, that after signing the guarantee it was altered in a material part, without his knowledge or consent, by putting seals to it; by reason of which it became void, in law. And the Court held the plea to be good; determining, that proof of the fact would not be a defence on a plea of *non assumpsit*. Mr. Baron *Parke* observed, that it was said, that this view was at variance with *Calvert* v. *Baker* (*d*); [where it was held, that an alteration in the acceptance of a bill of exchange need not be pleaded,] but that all that the Court must be considered as having decided in that case, was, that an alteration in an instrument might be objected to on *non assumpsit*, when the effect of it

(*a*) *Dawson* v. *Macdonald*, 2 M. & W. 27.

(*b*) *Lazarus* v. *Cowie*, p. 173, *ante*.

(*c*) *Davidson* v. *Cooper*, 11 M. & W. 778; 13 L. J. R. (N. S.) Exch. 276.

(*d*) See page 186, *ante*.

was to make it a different instrument, so as to render a new stamp necessary.

The distinction, in this case, is clear. If the defendant had consented to turn the guarantee into a deed, it would have become a good instrument, wanting, only, a fresh stamp; of which circumstance he might have taken advantage, not by way of plea in an action on the deed, but by way of defence on any other plea available to him; but this defence might be anticipated, and taken away, by getting the stamp impressed.

An irregularity under the Stamp Act, in issuing a banker's check, need not be pleaded.

In cases of checks upon bankers, drawn beyond the distance allowed, or post-dated, so as not to bring them within the exemption from stamp duty, and being, therefore, void by reason of their not being stamped as bills of exchange, the question of pleading the special matter has, on several occasions, been before the Court; and such plea has, in every instance, been stated to be unnecessary. See the cases under the division relating to Bills and Notes, page 172, *ante*. See also page 186, as to the necessity for pleading an alteration in a bill or note, to enable the defendant to take advantage of an objection on that head.

Want of stamp on probate.

The plaintiff, in a creditor's suit, who claimed a debt of considerable amount, having died, and a bill of revivor having been filed by his executrix, the defendants pleaded, affirmatively, the want of a sufficient stamp on the probate of his will. The Vice-Chancellor of England was of opinion that if the plea had been in the negative form, only, that the plaintiff was not the executrix, it would have been good. It was observed, that the plea being on oath, the defendants could not swear that probate had not been obtained; but his Honour seemed to consider that they might have sworn that the will had not been *duly* proved (*e*).

Supposing such a plea to be good, (which is, at least, doubtful,) it could, of course, be rendered unavailing, on issue taken upon it; as the stamp duty might, under the special provisions of the Stamp Act, be increased, making the probate valid from the beginning. But how could it be said, in such a case, that a will was not duly proved, any more than that a deed, insufficiently stamped, was not, for that reason, duly made and executed? The stamp on the Grant, and that which governs the duty, and leads to its being impressed, are matters collateral to the proving of the will.

A lease, if called in the pleadings an

If an instrument, duly stamped, be pleaded as one of another description, requiring a different stamp duty, it cannot be read,

(*e*) *Roberts* v. *Madocks*, 11 Jur. 938; 17 L. J. R. (N. S.) Chan. 38.

assignment, cannot be read unless stamped as the latter.

for want of such duty. This proposition, however inconsistent it may appear, is stated as resulting from the decision in *Baker* v. *Gostling* (*f*). The plaintiffs alleged in the declaration an assignment of a lease, and issue was taken upon this allegation. On the trial they produced the counterpart, not of an assignment, but, of an underlease, for a certain term, granted in consideration of a premium of 100*l.*, and an improved rent of 75*l.*, stamped with 30*s.*, and a progressive duty of 20*s.* It was held, that an issue had been taken on an assignment, and as the deed, which it was decided was not an assignment, but a counterpart of a lease, was put in to prove such issue, it could not be read, for want of a stamp as an instrument answering the description of that mentioned in the declaration.

Had it not been that the opinions of the learned Judges are given *seriatim*, leave would have been taken to doubt the correctness of the report of this case; as it is, by no means, necessary to refer to the Stamp Act for the grounds of the decision, which is, unquestionably right, in the main. Allusion, however, is, too distinctly, made to the Act, by each of their Lordships, to admit of any dispute upon the point. The Stamp Act, with humble deference to their Lordships' opinions, had, in truth, nothing, whatever, to do with the case; which ought to have been disposed of as if no stamp duties had existed; the result, certainly, would have been the same, and, therefore, so far as the parties are concerned, there is nothing to lament.

It is an inversion of the true principle of the Stamp Laws to say, that a deed can have effect from, or be controlled in the mode of its operation, by the stamp duty with which it is impressed; or, that a party, by giving it a name, can subject it to any particular duty, contrary to that which its tenor requires. The deed in question was, expressly, decided to be, as it, truly, was, a counterpart of a lease; and was admitted to be stamped with the only duty to which, as an instrument of that description, it could be liable; there could not, therefore, it is respectfully submitted, by any possibility, be room for any well-founded objection to its reception, on the Stamp Act. If it did not bear out the plaintiff's case, it should have been rejected, broadly, on that ground, and on that, only. Certainly, it is difficult to say to what the reasoning of the Lord Chief Justice tends, unless to this same conclusion, although his Lordship speaks of adhering to the uniform construction of the Stamp Act.

(*f*) 1 Bing. N. C. 246.

It is equally difficult to imagine, what duty should have been impressed upon the deed in question, to give it, as it were, a *locus standi;* because, it was not an assignment, nor a counterpart of an assignment; and it eludes all attempt to fix upon it any liability to stamp duty in another than its true character. The objection on the Stamp Act was not, certainly, a legitimate one.

IX.—Instruments subjected to the Common Deed Duty.

THERE will be found in the schedule to the 55 Geo. III. c. 184, a duty of 1*l.* 15*s.*, under various heads; this is usually termed the ordinary, or common deed duty; it seems to be an amount intended to be charged on every instrument upon which no specific duty is imposed; it is that which is referred to, in different parts of the schedule, as the duty on "deeds in general," "the ordinary duty on deeds or instruments not upon a sale," &c. Under the 44 Geo. III. c. 98, and 48 Geo. III. c. 149, the common deed duty was 1*l.* 10*s.*

The following are some of the heads, of a general character under which it will be met with in the present Stamp Act:—

Appointment, in execution of a power, of land or other property, or of any use or interest therein, where made by any writing, *not being a deed or will.*

Assignation or Assignment of any property, real or personal, heritable or moveable, *not otherwise charged, nor expressly exempted.*

Conveyance of any kind whatever, *not otherwise charged, nor expressly exempted.*

Declaration of any use or trust, of or concerning any estate or property, real or personal, where made by any writing, *not being a deed or will, nor otherwise charged.*

Deed of any kind whatever, *not otherwise charged, nor expressly exempted.*

Disposition of any lands, or other property, heritable or moveable, in *Scotland,* or of any right or interest therein, *not otherwise charged.*

Release and renunciation of lands, or other property, real or personal, heritable or moveable, or of any right or interest therein; any deed or instrument of, *not otherwise charged, nor expressly exempted.*

REVOCATION of any uses or trusts, of or concerning any estate or property, real or personal, where made by any writing, *not being a deed or will.*

SURRENDER (*not otherwise charged*) of any term or terms of years, or of any freehold or uncertain interest in any lands, hereditaments, or heritable subjects not being of copyhold or customary tenure.

The same amount will, also, be found under numerous other heads, as the specific duty on particular instruments; still forming, in some of such cases, a general charge upon all instruments under these several titles, not, expressly, made liable to any other duty, under the same. The various descriptions above extracted manifest an anxiety that no instrument, operating, in any way, as a transfer of property, or of any interest therein, should escape taxation.

An instrument may, certainly, come within several of the above descriptions; and may be chargeable, in respect of different subject-matters, to more than one amount of duty; but, in most instances, if it be a deed, it is considered that it will be liable under that head alone, although it may effect several transactions between the same parties, each the subject of a separate charge under some other of these heads, where not by deed. To give an instance—An instrument, not a deed, nor made upon sale or mortgage, being an *appointment* in execution of a power, a *declaration* of uses or trusts, and also a *revocation* of other uses or trusts, must, necessarily, be stamped with 1*l.* 15*s.*, under each of those heads; every such matter being, distinctly, charged with that duty; but where any of these objects is effected by a *deed*, reference is made to that common head, for the duty; and, therefore, if all, or any two of such matters form the subject of one deed, only one duty will attach, the instrument, then, becoming a "Deed not otherwise charged."

Again, an instrument, not being a deed, nor made upon a sale or mortgage, containing any of the matters aforesaid, and operating as an *assignment*, or as a *conveyance* of any property, or both, (acting upon different subjects,) and, also, as a *release* of any other interest, will, likewise, be chargeable, specifically, with duty under these heads respectively; but, if the instrument be a *deed*, it will be liable under that head alone; at least, as a general proposition, it is considered that it may be so stated. See a previous part of this chapter (IV. *Fourth Class*), for the cases in which this com-

mon duty is payable, in addition to that specifically charged on any instrument.

What is a deed.

Many instruments are rendered liable to this charge from the circumstance of their being deeds, which would not, having regard to the contents merely, be referrible to any head in the Stamp Act, and consequently, would not be subject to any duty; the question, therefore, is, sometimes, important, whether an instrument be a deed, or not.

A deed is stated to be "a writing sealed and delivered by the parties" (*g*); "a writing containing a contract and signed, sealed, and delivered" (*h*). This latter definition would seem to be too limited. See *Rex* v. *Fauntleroy* (*i*).

Delivery.

Delivery is, of course, essential to constitute a deed, but no particular form of words is necessary, either written or oral. In *Goodright* v. *Gregory* (*k*), a party seised of a tenement had agreed to dispose of it, which was done in an informal manner, by indorsement, by the parties called a memorandum, under seal, without any form of delivery. There was no stamp on the indorsement, which, unless it could be considered as a deed, was not liable to any stamp duty. Lord *Mansfield* said, "It is given in his presence, and he receives the money; it is clearly a deed between the parties, and must be so, therefore, with respect to the Stamp Act." Mr. Justice *Ashton* observed, that "an inaccuracy in the form of attestation shall not overset everything."

In *Hall* v. *Bainbridge* (*l*) an instrument admitted to be signed and sealed, and attested as "signed and sealed," was delivered over; and it was held, that it must be considered to have been delivered as a deed.

Affixing seals does not always constitute a deed.

The affixing of seals to parties' signatures, does not, necessarily, constitute the instrument a deed.

In an action of assumpsit for wages due to a sailor, the ship's articles were produced on the trial, when it appeared that there was a seal affixed to each party's name; and it was objected that the plaintiff should have declared on the deed; but Mr. Justice *Chambre* held, that although the affixing of a seal to an instrument was one of the formalities of the deed, it was not conclusive: if the parties did not mean to contract by deed, their ignorance as to the effect of a seal could not make the instrument a deed, the words

(*g*) 2 Blackstone, 295.
(*h*) Com. Dig. title "Faits."
(*i*) Page 389, *post*.
(*k*) Lofft, 339.
(*l*) 17 L. J. R. (N. S.) Q. B. 317.

"to which the parties have set their hands," not seals, was sufficient to show that it was not their intention to execute a deed (*m*).

And, recently, it was held by the Court of Exchequer, that a licence to use a patent, concluding thus, *viz.*, "As witness my hand at London, the 19 day of February, 1844," with a seal affixed to the signature, was not a deed, and was not, therefore, liable to any stamp duty. It did not purport to be sealed and delivered as a deed; it rather, as observed by Mr. Baron *Parke*, resembled an award, or the warrant of a Magistrate, which, although sealed, were not deeds (*n*).

The case of *Davidson* v. *Cooper* (*o*) would seem to inculcate a doctrine rather at variance with the foregoing, by deciding that the affixing of a wafer by or near to the signature after it was written, without anything else added, to indicate that the instrument had been sealed and delivered, was sufficient to admit of the defence, under a special plea in assumpsit, that such instrument had, without the knowledge or consent of the defendant, been altered in a material particular, and its nature and effect materially changed, so as to make it purport to be sealed by, and to be the deed of the defendant. Regard, however, being had to the different circumstances under which the cases were respectively presented, will show that there is no conflict between them. In the latter case, the defence rested on the fact, not that the instrument which had been executed was not the same, in purport and effect, as that mentioned in the declaration, which was the objection in *Clement* v. *Gunhouse*, but that it had, since it was executed, been so altered as to *purport* to be something else, and that such alteration had vitiated the original instrument according to the rule established in such cases.

A letter or power of attorney is chargeable with a specific duty; nevertheless, the case of *The King* v. *Fauntleroy* (*p*) may properly be referred to, as tending to illustrate the question as to what is a deed. The defendant was convicted of forging a *deed*, the instrument being a power of attorney; the point, whether a power of attorney was a deed, being reserved for the opinion of the Judges, who decided in the affirmative.

(*m*) *Clement* v. *Gunhouse*, 5 Esp. 83.

(*n*) *Chanter* v. *Johnson*, 14 M. & W. 408; 14 L. J. R. (N. S.) Exch. 289.

(*o*) 13 L. J. R. (N. S.) Exch. 276; 11 M. & W. 778.

(*p*) 1 C. & P. 421.

Insurance.

FIRE.

5 Will. & Mary, c. 21.
9 Will. III. c. 25.

By these Acts duties on policies of insurance were granted.

10 Anne, c. 26.

By this Act additional duties were granted.

What shall be deemed a policy of insurance.

Sect. 68.—All deeds, instruments, and writings, for payment of money upon the loss of any ship, or goods, or upon any loss by fire, or for any other purpose for which any writing, commonly called a policy of assurance, or insurance, is, or hath been usually made, to be deemed policies of assurance.

Vellum to be stamped before policy written.

Sect. 70.—All vellum, &c., upon which any policy shall be written, or printed, before any name, day, time, or sum is written or printed therein, to be brought to be stamped.

Penalty for writing policy before stamped.

Sect. 71.—If any person write, or cause to be written any name, day, time, or sum in, or sign, or seal, execute, or subscribe any policy before it is stamped, to forfeit 5*l.*; and a sum of 5*l.* to be paid over and above the duties; and the policy not to be given in evidence unless such last-mentioned 5*l.* and the duty be paid, and a receipt produced for the same.

Sect. 73.—All the provisions of 10 Anne, c. 19, with respect to surrenders of copyholds, to be applied with relation to the policy duties. See "Copyholds."

12 Anne, stat. 2, c. 9.
30 Geo. II. c. 19.

The further duties granted by these Acts to be payable, (by express declaration in 5 Geo. III. c. 35,) on policies.

5 Geo. III. c. 35.
16 Geo. III. c. 34.

Further duties granted on policies.

17 Geo. III. c. 50.

The like, where the property exceeds 1000*l.*

Penalty for signing policy exceeding 1000*l.* before stamped.

Sect. 42.—If any person sign, &c., any policy, whereby houses and goods are insured to the amount aforesaid, before the vellum, &c., is stamped, to forfeit 10*l.*; and a sum of 5*l.* to be paid, over and above the duty; and the policy not to be available unless the duty and the 5*l.* be paid, and a receipt for the same produced, and the policy be stamped.

22 Geo. III. c. 48.

By this Act a per-centage duty on sums insured by any policy for insuring from loss by fire, was granted. Per-centage duty.

Sect. 2.—Not to extend to the insurance of any public hospital.

Sect. 4.—No person to insure, or keep an office for insuring houses, furniture, goods, wares, merchandises, or other property, from loss by fire in Great Britain, without a licence from the Commissioners of Stamps. Licence for insuring.

Sect. 5.—Not to exclude the Royal Exchange and London Assurance Corporations from insuring, as heretofore, without a licence. Exceptions.

Sect. 6.—The Commissioners, or the major part of them, under their hands and seals, to grant licence for insuring houses, &c., from loss by fire, to all bodies, politic or corporate, and persons applying for the same; every such licence to set forth the name and other description of the body or person taking out the same, and also the principal house or other place where the business of insuring is principally carried on by such body or person. Commissioners to grant licences.

Sect. 7.—If any body or person insure, or set up any office for insuring, without such licence, or in any other house than that named in the licence, or in some subordinate house, kept by an agent; or in any other manner contrary to the licence, or to the true intent and meaning of this Act, to forfeit, for every day in which such offence is committed, 50*l.*, and double the amount of the premiums received in any such day. Insuring without licence.

Sect. 8.—Every person or body to whom, or to which, a licence is granted, at the time of receiving the same, to give security, with sureties to be approved by the Commissioners, by bond, in such sum as the Commissioners shall think reasonable, not exceeding the probable amount of duty for half a year, with condition to make out, sign, and deliver, an account of all sums received for duty; and well and truly make payment thereof according to this Act; and to observe the directions of the Act. Bond to be given to secure duties.

Sect. 9.—Every licence to be in force for a year; and if granted to two or more, and any of them die, to continue in force for the survivor or survivors. Licences to be for a year.

Note.—Licences made permanent by 5 & 6 Vict. c. 79, s. 20.

Sect. 10.—Where a company is not incorporate, or the partners exceed four persons, the Commissioners may grant licence to any two to be named as and for the whole; which is to continue in force notwithstanding those to whom it is granted may die. Licence to be granted to any two members.

Sect. 11.—Persons so licensed, previously to granting or continuing a policy, to receive, for the use of His Majesty, the duty, and give a receipt for the same, as and for one year's duty, and, in default, to be accountable for the same as if received. Persons licensed to receive the duties.

Sect. 12.—The person entitled to the benefit of any such policy, at the end of the year for which the same is granted, or within fifteen days, and so, at the end of every subsequent year, to pay to the insurer one year's duty; the insurer to give a receipt for the same; and in default of payment within the time aforesaid, and before any loss shall be sustained, the policy to be void. Policies to be renewed within fifteen days.

Sect. 13.—As to the mode of payment of the duties on policies granted before the passing of the Act.

Sect. 14.—In case of a policy for less than a year, the duty to be paid in proportion. Policies for less than a year.

Sect. 15.—Where a policy is for one or more years, and part of another year, the insured to be liable, so far as regards the fraction of a year, to a just proportion, only, of a year's duty, if on the first payment of the duty he pays as well the proportion for such fraction as the whole of the first year's duty; except the fraction of a penny, which is not to be accounted for. For one or more years and a fraction.

Sect. 16.—In case of taking out a new policy before the expiration of an old Where new

policy before the former expires

one, for the sake of insuring a greater or different sum, the same proportiona abatement of duty to be made, as the insurers make of the premium

Sect 17 —As to insurances by persons not resident in Great Britain at the commencement of the Act

Insurances for terms

Sect 18 —In case of insurance for more years than one, the duty may be paid in one sum, with such proportional abatement as is made of the premium, if paid in one sum

When the interest ceases before the term

Sect 19 —Where the property of a person insuring for a term of years ceases before the expiration of the term, the Commissioners may allow and pay back to the persons appointed to receive the tax, so much of the duty as shall appear to have been paid for the unexpired term

Insurers to keep accounts

Sect 20 —Every body or person obtaining a licence for an office of insurance, from time to time to keep a true account in writing, in which is to be inserted the No of the policy granted, the name of the person insuring, with the place of his abode, the sum insured, and the time for which the same is insured, also the day of the month and date of the year, which account is at all times to be open for inspection by any persons authorized under the hands and seals of the Commissioners, or the major part of them

When and where accounts to be rendered in London or Westminster

Sect 21 —Persons licensed for an office in London or Westminster, or within five miles of either of them, within two months after the 25th December, 25th March, 24th June, and 29th September, in every year, or at such other times after the expiration of the said two months as may be appointed by the Commissioners giving fourteen or more days' notice in the London Gazette, to deliver to the Commissioners, or person appointed to receive the same, at the head office true copies of the said accounts for the quarter completed before such delivery, and at the same time to pay the sum or sums appearing to be due thereon to the Receiver General of stamps, upon pain of forfeiting for not delivering true copies, 500*l*, and for default of payment, double the amount due

Sect 22 —Persons licenced for an office not in London or Westminster, nor within five miles, to deliver such copies, and pay the duties to the head distributor of stamps for the county, or the person authorized to receive the same, within the times aforesaid, respectively, or such other times as may be appointed by the said distributor or other person, on notice as aforesaid, by advertisement in the London Gazette, or the newspaper, if any, published in the county where the distributor resides, under the penalty, for not delivering the accounts, of 200*l*, and not paying the money, of double the amount due.

These accounts to be delivered in London, if so required See 55 Geo III c 184, s 35

Allowance for receiving duties

Sect 23 —A return of 1*s* in the pound to be made for all money duly accounted for Altered by 55 Geo III c 184, s 36

Receivers not disqualified

Sect 24 —Persons receiving the duties not to be disqualified from voting for members of Parliament

Sect 25 —As to the appropriation of the penalties Altered by 44 Geo III c 98, s 27 See 'PENALTIES'

General issue, &c

Sect 27 —Persons sued for anything done under this Act may plead the general issue, and give the Act in evidence, &c

26 Geo III c 82

Further exemption

Sect 9 —Exemption from duty of sums insured by policies made in Great Britain for insuring property within any foreign kingdom in amity with His Majesty

37 Geo. III. c. 90.

Granting additional per-centage duties, and new duties on the policies.

44 Geo. III. c. 98.

All existing duties under the Commissioners of Stamps repealed, and others granted in lieu, with the same exemptions as to fire insurances.

48 Geo. III. c. 149.

The stamp duties on the policies granted by the last Act repealed, and others granted.

50 Geo. III. c. 35.

Sect. 1.—Any person in Great Britain may insure houses, &c., in any of the Islands, settlements, or territories belonging to, or under the dominion of His Majesty, in the West Indies, or elsewhere beyond the seas, against loss by fire, without taking out a licence, and entering into a bond; and without being liable to the said yearly duty imposed by the 44 Geo. III.; but subject as after contained.

No licence for insuring property in the Colonies.

Sect. 2.—New per-centage duties granted on the policies.

Sect. 3.—No such insurance to be made for more than a year. Every policy whereby an insurance is made or attempted for more than a year, to be void; and the party making or attempting to make any such insurance to forfeit 50*l.*

Policies to be for not more than a year.

Sect. 7.—The powers and provisions of former Acts, so far as the same are applicable to be in force as to the new duties.

Sect. 8.—If a policy (charged by this Act,) be underwritten for a less sum than intended, and for which it is stamped, or for a greater sum than that for which it is stamped, then, if a new policy, duly stamped, and underwritten for the same risk, and sum, be produced within a month after the last subscription on the first policy, and the irregularity be proved to the satisfaction of the Commissioners to have been inadvertently done, they may cancel the stamps on the first policy, and give others in lieu.

Spoiled policy stamps may be allowed in certain cases.

55 Geo. III. c. 184.

The duties granted by the 48 Geo. III. c. 149, and 50 Geo. III. c. 35; and also the per-centage duties granted by the 44 Geo. III. c. 98, repealed, and others granted in lieu. See the TABLE.

Present duties.

Sect. 8.—The provisions of former Acts to be applied, so far as they may be, to the new duties.

Provisions of former Acts.

Sect. 32.—The per-centage duties to be collected by the persons licensed under the 22 Geo. III. c. 48, and by the Royal Exchange and London Assurance Corporations, at the time of their making, renewing, or continuing, or receiving the premium for the insurances; and be accounted for, and paid over as directed by that Act; and the said two corporations to be subject to the regulations of that Act, except as to taking out licence.

Duties to be collected and accounted for as before.

Particulars to be contained in accounts

Sect 33 —Every quarterly account delivered under that Act to contain a true and faithful account of all policies issued, made, renewed, or continued, whether for a year, or more years than one, or less than a year, from the first to the last day of the quarter, (both inclusive,) together with the numbers and dates of the policies, the names and places of abode of the insured, the sum insured by each policy, the time for which the insurance is made, renewed or continued, and the duty received for the same And an affidavit or affirmation, annexed to and delivered with the account, to be made by the secretary, or chief clerk, stating that he has examined and checked the same with the books of the company, that it contains a true account of the matters and things required by this Act, and also of any allowances or returns of duty in respect of time unexpired, or policies surrendered For default of delivery of such account the company to forfeit 500*l*

Accounts to be verified

Penalty

Quarter days may be altered

Sect 34 —Companies using other quarter days than those mentioned in the 22 Geo III, may make up their quarterly accounts accordingly, and deliver them at any time within two calendar months

Country offices may be required to account in London

Sect 35 —Companies and persons carrying on business beyond five miles from London or Westminster, to transmit their accounts to the Commissioners at their head office, if so required, and pay the duties to the Receiver General, and in default be subject to the penalties of the 22 Geo III, as for not delivering their accounts, and paying their duties according to that Act

Allowance for receiving the duties

Sect 36 —Allowance to be made for receiving, accounting for, and paying over the duties as required by the 22 Geo III, as follows, *viz*, to those whose head office is in London or Westminster, 4*l* *per cent* on duties collected at such head office, and 5*l* *per cent* on those collected by their agents elsewhere, to those who have no head office in London or Westminster, 5*l* *per cent* Provided they deliver their quarterly accounts, containing all the requisite particulars, and pay the duties within the time prescribed by the said Act

9 Geo IV c 13

In cases of plurality of risks a distinct sum to be insured on each

Sect 1 —Where any insurance is made upon two or more buildings so separated as to occasion a plurality of risks, or upon property in two or more such buildings, or in two or more places so separated as to occasion a plurality of risks, (except the implements and stock upon any one farm,) every such separate building to be separately valued, and a distinct sum insured thereon, and, in like manner, one distinct sum to be insured on property contained in every separate building, or place, and no insurance in one gross sum upon two or more such separate subjects or parcels of risk, collectively, to be lawful

If not, policies to be void, and insurers to forfeit 100*l*.

Sect 2 —If any policy be granted, renewed, or continued, whereby any insurance is made upon two or more such separate subjects or parcels of risk, collectively, in one sum, contrary to the meaning of this Act, the same to be void, and to be deemed a fraudulent contrivance to evade the duty And the person granting, renewing, or continuing the same to forfeit 100*l*

Unless there be an average clause

Sect 3 —Not to prevent the insurance, collectively, in one sum, of any number of separate buildings, or the goods in distinct buildings, or places, provided there be a clause that in the event of loss, the insurers shall make good such proportion, only, of the loss, as the sum insured shall bear to the whole property, at the time when the fire breaks out

Recovery of penalties.

Sect 6 —Penalties may be recovered in any of the Courts of Law, in the name of the Attorney or Solicitor General, in England or Ireland, or of the Advocate or Solicitor General in Scotland

3 & 4 Will. IV. c 23

Farming stock exempt

Sect 5 —No insurance on agricultural produce, farming stock, (live or dead,) or implements, or utensils of husbandry upon any farm or farms in Great

Britain or Ireland, to be liable to the yearly per centage, or any other stamp duties on insurances, provided the insurance be effected by a separate and distinct policy

Accounts of such insurances to be rendered.

Sect 6 —Persons insuring to deliver, with their quarterly accounts, a separate and distinct account of all insurances of agricultural produce, farming stock, implements, or utensils of husbandry, specifying the number of the policy, the sum insured and the time for which the insurance is made For default in the delivery of such account to forfeit 100*l*

5 & 6 Vict c 79

Licences and securities to be permanent

Sect 20 —Every licence to be granted under the 22 Geo III c 48, to continue in force so long as the body or person named therein, or any of them, continue to insure, or carry on the business of insurance, or, in the case of a company not incorporate, so long as the partners named therein shall be members or a member, provided that every person and body to whom licence is granted give security, by bond, to the Queen, in such sum as the Commissioners of Stamps and Taxes think proper, with sufficient sureties to their satisfaction, or by transfer of stock or deposit of Exchequer bills, for making out and delivering, as required by any Act, the accounts required to be kept, and paying the duties due thereon, and for performing all other matters required by any Act, every such security to continue not only during all the time the licence shall be in force, but during all the time the persons or body named in the licence continue to insure, or otherwise, according to the condition of the bond or declaration When the security is no longer necessary, the stock or Exchequer bills may be transferred or given up to any of the members of the company, or otherwise, according to the terms of the declaration The security to be renewed whenever any of the parties die, or become bankrupt, or insolvent, or reside beyond the seas, and whenever the Commissioners think fit, and in the event of refusal to renew the security the licence may be revoked

Ireland

The 9 Geo IV. c 13, and 3 & 4 Will IV c 23 (*ante*), apply to Ireland, the other enactments relating to Ireland are the 55 Geo III c 101, ss 14 to 48, and the 5 & 6 Vict. c 82, for which see "APPENDIX"

MARINE, &c

5 Will & Mary, c. 21
9 Will III c. 25

By these Acts stamp duties on policies of assurance were granted (since repealed).

10 Anne, c 26

Additional duties were granted by this Act.

Sects. 68, 70, 71, 73 —For the special provisions contained in these sections relating to policies, see page 390, *ante*.

12 Anne, stat 2, c 9

Additional duties were granted by this Act

11 Geo I c 30

Sect 44 —Reciting that to evade the said duties promissory notes were given instead of policies

Stamped policy to be made out within three days

When any vessel, goods, or merchandise is insured, a policy, duly stamped, to be issued or, at least made out, within three days, or the insurer to forfeit for every offence 100*l*, and all notes for insurances of ships, &c, at sea or going to sea to be void

30 Geo II c 19
5 Geo III c 35

Further duties granted (since repealed)

7 Geo III c 44

Writing not stamped, whereby risk added, void

Sect 2 —If any risk or adventure, different from that mentioned in the original policy, and upon which further premium is paid, be added to such policy, by writing not duly stamped, the same to be void, and the premium paid to be the property of the assurer

35 Geo III c 63

Repealing the former duties on sea insurances, and granting in lieu percentage duties to be paid by the assured

Sect 2 —Not to extend to insurances against fire or upon life (*a*)

Printed forms of policies to be provided

Sect 5 —The Commissioners of Stamps to provide printed forms of policies, (as in the schedule to the Act,) duly stamped, so that persons may buy the same without charge for the paper, &c, or may, at their election, bring their own paper, &c to be stamped, on payment of the duty; the officer to write, or mark thereon, the day, month, and year, when any printed paper, &c is delivered out by him, if he wilfully neglect to do or perform any matter hereby required, to forfeit 100*l* and be dismissed

Not on vellum for less than 10 000*l*

Provided—The Commissioners not required to provide, at the public charge, any *vellum* or *parchment* where the sum insured does not amount to 10,000*l* See 39 & 40 Geo III c 72, *post*

An office to be in London

Sect 6 —The Commissioners to establish an office in London, at or near the Royal Exchange, and appoint an officer there to distribute policies to persons carrying on the business of insurance, on payment of the duties, subject to the usual allowance on stamped paper

Persons to be supplied on credit

Provided—The officer, with the approbation of the Commissioners, may open in books for that purpose, an account with any such persons, who shall have given security by bond, to the satisfaction of the Commissioners, for payment of the duties as appointed by them, and supply such persons with paper, &c printed and stamped, on credit, in such quantities as the Commissioners shall authorize, making the like allowances as on present payment

(*a*) Nor to any other than marine insurances, according to the view of the Court of Exchequer, in the recent case of *The Attorney-General* v *Cleobury*

The officer progressively to number all policies so issued on credit, beginning the enumeration with every distinct account and set down the numbers of such policies with the duties thereon, and the date of delivery If he knowingly make any false entry to the damage of any person, to be liable to pay treble the value of the damages and costs to the party, and be dismissed

Policies issued on credit to be numbered

Sect 7 —Every person to whose credit stamped paper, &c. is delivered, first to give bond to His Majesty in such sum as the Commissioners may think reasonable, not exceeding the probable amount of the duty for any term not exceeding two months nor less than six weeks, conditioned to pay all sums due according to this Act The Commissioners to specify the times of payment in the bonds, not to be less than eight payments in the year Such bonds to be renewed as often as forfeited, or any party thereto die, or become bankrupt, or insolvent, or reside beyond seas The bonds to be delivered up to be cancelled at the request of the obligors, their executors, &c, or put in suit within two terms or in default be void

Security to be given

Sects 8 9, 10 —As to the allowance of spoiled stamps—repealed by 39 & 40 Geo III c 72, s 10, and 54 Geo III c 133

Sect 11 —Every contract or agreement for any insurance, for which the duty is chargeable, to be engrossed, printed, or written, and to be called "a policy of insurance," and the premium, or consideration in nature thereof, and the particular risk or adventure, the names of the subscribers, and the sums insured, to be expressed in or upon such policy, or the insurance to be void

Every contract for insurance to be written

Sect 12 —No policy of insurance on any ship to be made for any certain term longer than twelve months Any policy for a longer term to be void

Time policies

Sect 13 —Provided—Not to extend to prohibit the making of any lawful alteration in the terms or conditions of any policy, or to require additional duty by reason of such alteration, so that the same be made before notice of the determination of the risk, and the premium exceeds 10*s* *per cent*, and the thing insured remains the property of the same person, and the alteration does not prolong the term beyond the time hereby allowed, and no additional sum be insured

Not to prohibit lawful alterations in policies.

Sect 14 —No insurance, in respect whereof any duty is payable, nor any contract for such insurance, to be available unless duly stamped, and the Commissioners of Stamps not to be allowed to stamp any paper, &c, after any such insurance or contract is engrossed, printed, or written thereon, under any pretence whatever See 9 Geo IV c 40, s 1, as to stamping Policies of Mutual Insurance after written

No insurance to be stamped after written.

Sect 15 —Every person effecting an insurance, or procuring the same, or giving, or paying, or agreeing to pay, any premium or consideration for the same, or entering into any contract for the same, unless such insurance or contract be written upon paper, &c, duly stamped, to forfeit 500*l* And any broker or other person negotiating, or writing, &c, the same, to forfeit 500*l*

Penalty for making insurances, unless by contract duly stamped

Sect 16 —No broker, agent, scrivener, or other person, to be allowed to make any charge against his employer for any sum for brokerage, or otherwise, in negotiating any insurance, or writing the same, or for premium, unless the insurance be written on paper, &c, duly stamped, and all sums paid by such employer, in any such case, to be deemed to be paid without consideration

Brokerage not a charge unless insurance stamped

Sect 17 —If any person become an assurer, or underwrite any insurance, or receive, or contract for any premium, or pay or allow any money upon any loss, relative to any insurance, unless the same be written on paper, &c, duly stamped, or if any person be concerned in any fraudulent device to evade the duties, to forfeit 500*l* See further provision in 6 & 7 Vict c 21

Penalty on assurers where contract is not stamped

Sect 18 —Not to extend to subject any member, officer, or servant of the London Assurance or Royal Exchange Assurance Corporations to penalties, by reason of their making any agreement to insure by any label, slip, or memorandum, upon paper, &c, unstamped, as has been customary, provided the day on which the agreement is made be truly expressed therein, and a stamped policy be made out, and duly executed within three days

Exceptions

Sect. 19, 20, 21—As to the appropriation, &c. of penalties. Superseded by 44 Geo. III. c. 98. See "PENALTIES."

Sect. 22.—The powers, provisions, &c., of former Acts to be in force, so far as the same are applicable, for collecting and securing the duties by this Act granted.

39 & 40 Geo. III. c. 72.

For what sums forms of policies to be supplied.

Sect. 8.—So much of the 35 Geo. III. c. 63, as requires that the Commissioners should not provide parchment, stamped for policies, where the sum insured should not amount to 10,000*l.* repealed. The Commissioners to provide sufficient quantities of parchment or paper only, not vellum, for policies duly stamped for 5000*l.*, 6000*l.*, 7000*l.*, 8000*l.* and 9000*l.*

Sect. 9 & 11.—Relating to spoiled stamps, repealed by 54 Geo. III. c. 133.

Sect. 10.—Repealing sect. 9 of the 35 Geo. III. c. 63, relating to the allowance of spoiled stamps.

41 Geo. III. c. 10.

Granting additional duties (since repealed) on foreign policies.

42 Geo. III. c. 99.

Reducing the duties in certain cases.

44 Geo. III. c. 98.

Repealing all former duties and granting others in lieu with the following allowance, *viz.* :—

Allowance.

Schedule (C).—To persons carrying on the business of sea insurance in London who have given bond for payment of duties, 30*s.* per cent.

Sect. 8.—The provisions of former Acts to be in force as to the new duties.

48 Geo. III. c. 149.

The duties granted by 44 Geo. III. c. 98, to cease, other duties granted in lieu.

Sect. 8.—The provisions of former Acts to be applied for securing the new duties.

54 Geo. III. c. 133.

Spoiled policy stamps to be allowed under this Act only.

All the provisions of the 35 Geo. III. c. 63, and any subsequent Act or Acts, for the allowance of Stamps on Policies of Insurance, as spoiled or misused, repealed.

The Commissioners to allow, as spoiled or misused, Stamps on Policies of Insurance in the following cases, and upon the following terms only; *viz.* :—

Where policy not signed.

1st.—When filled up in an incorrect or improper manner; or obliterated, or otherwise spoiled or rendered unfit for use; or filled up for some insurance not proceeded with; and the same is not signed: Provided application be made within six calendar months.

2ndly —Where underwritten, but not to the full amount the duty will cover, and another policy is produced underwritten in lieu by the same persons, to the same amount, on the same property, and for the same risk Provided application be made within three calendar months after the last subscription on the first policy

Where not underwritten to extent of duty

3rdly —Where underwritten, and any error is afterwards found therein, so that the insurance is not effected, and another policy is produced underwritten in lieu by the same persons, in which the error is rectified Provided the underwriters sign a declaration that the first insurance is cancelled, and the premium returned on that ground only, and provided proof be given of the error, and the new policy be underwritten before notice of the termination of the risk first insured, and provided application be made within six calendar months after the last subscription on the first policy

Where error in policy, and another issued

4thly —Where underwritten, and the terms are afterwards agreed to be altered, and another policy is produced underwritten in lieu by the same persons, to the same amount, on the same property, and with such alteration in the terms as agreed upon Provided the underwriters sign a declaration that the first policy is cancelled, and the premium returned on that ground only, and provided the new policy be underwritten before notice of the termination of the risk first insured, and provided application be made within three calendar months after the last subscription on the first policy

Where terms altered, and policy produced

5thly —Where underwritten, and the insurance is made subject to the approbation of the insured, and such condition is expressed, and the insured signifies his disapprobation within the time prescribed therein Provided all the underwriters (except any that are dead, bankrupt, insane, or out of the kingdom) sign a declaration that the insurance is cancelled, and the premium returned on that ground only, and provided application be made within three calendar months after the time prescribed for disapprobation

Where subject to approbation, and is disapproved

6thly —Where the insurance is made for a particular voyage and the ship does not proceed at all, or within the time specified, (if any) or the goods are not shipped at all, or within the time specified, or not on board the ship named, or if it turns out that the insured had not the interest intended to be assured Provided in all these cases the underwriters, (except as aforesaid,) sign a declaration that the insurance is cancelled and the premium returned for some or one of the reasons specified, and provided application be made within three calendar months after the insured, if in Great Britain, or his agent, if not, knows the facts

Where for particular voyage, and ship does not sail, or goods are not shipped, or party has no interest

No allowance to be made if the underwriters have run any risk, unless another policy be produced insuring the same property for the same amount, upon some other voyage, or for the same voyage at some other time

Upon the allowance of any policy the Commissioners to give other policy stamps in lieu

Sect 2 —In the 2nd, 3rd and 4th cases, if some only of the underwriters have underwritten another policy the allowance may be made, except for the amount not transferred to a new policy; and if any legal proceedings are intended, in respect of the amount in the first policy not transferred, the Commissioners may expunge the stamp thereon, and substitute another for the amount not transferred

Further provision in the 2nd, 3rd, and 4th cases

Sect 3 —Provided—If, in case of a policy underwritten but not to the full amount the stamp duty will cover, it is inconvenient to get another underwritten, then, if it be brought within three calendar months after the date of the last subscription, the stamp may be expunged, and another substituted for the amount underwritten, and other policy stamps given for the difference.

Where not underwritten to full extent of duty, stamp may be altered

Short interest. Sect 4 —Where the sum insured exceeds the value of the party's interest by 1000*l*, where the duty is 1*s* 3*d* *per cent*, or by 500*l* where the duty is 2*s* 6*d* *per cent*, allowance may be made for the duty on the excess, on the policy being delivered up to be cancelled, and proof made of the value of the interest Provided all the underwriters (except as aforesaid) sign a declaration that the premium is returned on account of short interest or in respect of their several proportions of the excess And provided application be made within three calendar months after the value of the interest is known to the insured, if in Great Britain, or to his broker or agent, if not Other policy stamps to be delivered for the amount so to be allowed No allowance to be made for short interest where the interest is valued

Not valued

No allowance if underwritten beyond duty Sect 5 —Provided—No allowance to be made, in any case, where the policy is underwritten to a greater amount than the stamp duty thereon will cover

Unless done inadvertently, and another policy is underwritten within three days Sect 6 —Provided—Allowance may be made where a policy is underwritten to a greater amount than the duty will cover, if proved to be done inadvertently, and another policy, duly stamped, be underwritten in lieu by the same persons, to the same amount, on the same property, and for the same risk within three days, and application be made for allowance within seven days after the last subscription on the first policy

In case only some of the underwriters can be procured to underwrite another policy within the time, allowance may be made for the duty except what is not transferred, (if application be made within seven days,) and the stamp expunged, and another substituted for the amount not transferred

Within three days it may be stamped for excess If it be inconvenient to get another policy underwritten, and that underwritten to too large an amount be brought within three days after the last subscription, and the duty paid for the excess, an additional stamp may be put upon the policy.

Signatures to be in full Sect 7 —No allowance to be made where a declaration is necessary unless the same be signed with the names in full

Refusing to sign If any underwriter agree to return the premium and refuse to sign a declaration, to forfeit 50*l*

Allowance may be made though commission retained Sect 8 —In all such cases of return of premium, to be sufficient if a return be certified except of one shilling in the pound, or guinea, for the broker's commission, and of not more than half *per cent* agreed to be retained for the trouble to the underwriters and not for any risk incurred

False declaration Sect 9 —Any underwriter wilfully signing a false declaration of the grounds of returning premium, or of the quantity returned, to forfeit 100*l*

Forging a declaration Sect 10 —To forge an underwriter's handwriting to any declaration, or aid therein, or fraudulently to alter the same, or knowingly to utter any such forged or altered declaration, with intent to defraud the King, for the first offence a penalty of 500*l*, a second or other offence to be felony subject to transportation for seven years

Commissioners to make regulations, &c Sect 11 —The Commissioners to make rules and regulations as to the allowance of spoiled stamps, and to require affidavits, to be made before them or a Master in Chancery, ordinary or extraordinary or a Commissioner in Scotland, and to call for such documents as they consider necessary

Officers may examine claims Sect 12 —For facilitating such allowances the Commissioners may authorize any of their officers to examine the claims and take affidavits

Perjury Sect 13 —The taking of a false oath relating to any of the matters aforesaid to be deemed perjury

54 Geo III c 144

Sect 1 —The Commissioners may supply persons carrying on the business of insurance in London with blank paper, of convenient size stamped as required for policies for the purpose of effecting contracts of insurance thereon, free of charge for paper, and either for ready money, or on credit as in the 35 Geo III c 63 If on credit, the duty to be secured as by that Act, the regulations of which are to be observed

Supply of stamps for contracts

Sect. 2 —Bonds already given to extend to secure the duties under this Act

Sect 3 —Every contract of insurance on such blank paper to be dated on the day it is signed and if signed on different days to be dated on the day signed by each underwriter In default, the broker or person effecting the insurance, and the underwriter, to forfeit 100*l*

Contracts to be dated the day they are signed

Sect 4 —Every such contract also to specify the name of the ship, (unless "ship or ships,) the voyage or risk, the premium, the thing insured, the names style or firm of one or more of the persons interested, or else of the consignors, or consignees, or of the persons in Great Britain receiving the order for, and effecting the insurance, or of the persons giving the orders to the agent employed In default, to be void

To specify certain particulars

Sect 5 —Every such contract not only to be obligatory on the underwriters to subscribe a regular policy in lieu when required, and also to date their subscriptions on the same day as the contract, but to be available as a competent instrument of insurance in case a regular policy is not underwritten

Policy to be subscribed if required

Sect 6 —Whenever the contract is delivered up to the Commissioners to be cancelled within one calendar month after the last subscription, and a regular stamped policy is produced in lieu, underwritten by the same persons, to the same amount, on the same interest, and for the same voyage or risk, the duty to be allowed in other stamps for contracts or policies

Stamp to be allowed where policy underwritten

Sect 7 —Such allowance may be made notwithstanding the policy contain matter explanatory of the contract, or vary therefrom in consequence of any error in the contract, or of the terms having been agreed to be altered Provided, in case of error, that satisfactory proof be given of the same, and in case of alteration of terms that the policy be underwritten before notice of the termination of the risk, and that the thing insured remain the property of the same person

Although the terms vary

Sect 8 —Provided—If the policy be underwritten by some only who signed the contract, by reason of refusal, death, bankruptcy, or absence, allowance may be made except for so much as is not transferred to the policy And if any legal proceedings are intended, in respect of the sums not transferred, the Commissioners may substitute a stamp on the contract for the amount not transferred

Allowance of part where all do not subscribe the policy

Sect 9 —No allowance to be made in respect of any contract underwritten to a greater amount than the stamp duty will cover, unless proved to be done inadvertently, and a policy be made out, and be underwritten in full, or in part, in lieu within three days, and application be made within seven days after the last subscription on the contract

Where contract underwritten beyond the duty

Sect 10 —The Commissioners may make such and the like allowances in respect of contracts, where spoiled without being underwritten, and in the cases of greater or less sums being underwritten than the stamp duty will cover, and in cases of insurances subject to approbation, and of no risk, no interest, and short interest, respectively, as in respect of policies under the 54 Geo III c 133, and upon the like terms and conditions

Allowance may be made on contracts as on policies

Sect 11 —The powers, provisions, &c, of the 54 Geo III c 133, for facilitating the allowance, examining the claims, preventing frauds, and punishing offences, to be exercised and observed with regard to contracts

54 Geo III c 133, to be applied

Sect 12 —If any person to whom allowance is made under this Act, or any other Act, be indebted for stamps supplied on credit, the Commissioners may write off the amount instead of delivering stamps

Amount to be written off if party indebted

55 Geo. III. c. 184.

The duties granted by the 48 Geo. III. c. 149, repealed, and others granted in lieu, most of which are since repealed. See the TABLE.

Sect. 8.—The provisions of former Acts to be applied to the new duties.

9 Geo. IV. c. 49.

Policies of mutual insurance may be stamped.

Sect. 1.—Policies of mutual insurance may be stamped with additional duties, although previously underwritten by any number of persons; anything in the 35 Geo. III. c. 63, to the contrary. Provided, they are not underwritten to an amount exceeding the sum or sums the stamp already thereon will warrant.

3 & 4 Will. IV. c. 23.

The duties on foreign policies and time policies repealed, and others granted in lieu.

Sect. 4.—The powers, provisions, &c., of former Acts to be applied to the new duties.

7 Vict. c. 21.

Present duties.

By this Act the stamp duties on policies or other instruments of sea insurance were repealed and others granted in lieu, in Great Britain and Ireland. See the TABLE.

Former Acts to be in force.

Sect. 3.—The powers, provisions, &c., of former Acts, in all cases not hereby expressly provided for, to be observed, applied, &c., for raising, levying, collecting, and securing the new duties.

Penalty for evading the duties.

Sect. 4.—If any person become an assurer upon any insurance in respect whereof any duty is hereby made payable, or subscribe, or underwrite, or otherwise sign or make, or enter into any contract, agreement, or memorandum of any such insurance, or receive, or contract for, any premium or consideration for any such insurance, or receive, charge, or take credit in account for any premium, or consideration as aforesaid, or any money as or for any such premium or consideration as aforesaid; or wilfully or knowingly take upon himself any risk, or render himself liable to pay, or shall pay or allow, or agree to pay or allow in account or otherwise, any sum of money upon any loss, or peril, or contingency relative to any such insurance, unless such insurance be written on vellum, &c., duly stamped; or if he be concerned in any fraudulent contrivance or device, or be guilty of any wilful act, neglect or omission with intent to evade the duties, or whereby they shall be evaded, he shall forfeit 100*l*. Provided, not to extend to subject the London Assurance, or Royal Exchange Assurance Corporation, to any penalty by reason of making any agreement to insure by any label, &c., on unstamped paper, provided the day on which the agreement is made be truly expressed in words at length, and a stamped policy be executed within three days.

Ireland.

The provisions relating to sea insurances in Ireland, are the 5 & 6 Vict. c. 82, ss. 21 to 30 (see "APPENDIX"); and, by special direction of that Act (s. 30), the 54 Geo. III. c. 33, as to the allowance of spoiled stamps; and also the 7 Vict. c. 21.

THE DUTIES on Policies of Sea Insurance, although percentage duties on the amount insured, must, nevertheless, be denoted by stamps; but, with the exception of policies of mutual insurance, not underwritten for more than the stamp duty thereon will warrant, no such policy can be stamped after it is written. See 35 Geo. III. c. 63, s. 14, and 9 Geo. IV. c. 49, s. 1.

If stamped after written not available.

On the trial of an action a policy was produced with the proper stamp thereon; but it was proved, that, on a former trial, the same policy was produced, and that it being then unstamped the plaintiff was nonsuited; it was objected that the Commissioners of Stamps were prohibited from stamping sea policies after they were written. Lord *Ellenborough* said the statute was imperative upon him; and the plaintiff was again nonsuited (*a*). The opinion previously expressed by Lord *Kenyon* in *Wright* v. *Riley* (*b*), that a bill of exchange, stamped after it was written, might be valid, although the Commissioners had exceeded their duty in stamping it, cannot be referred to as an authority, having been overruled by subsequent decisions. See "BILLS OF EXCHANGE," page 174, *ante*.

What is a policy.

By the 10 Anne, c. 26, s. 68, all deeds, instruments, and writings for payment of money upon the loss of any ship or goods, or upon a loss by fire, or for any other purpose for which any writing, commonly called a policy of assurance, or insurance, has been usually made, are to be deemed policies of insurance; but, by the 35 Geo. III. c. 63, s. 11, every such policy is declared to be void, unless the premium, or consideration in nature thereof, and the particular risk or adventure, the names of the subscribers, and the sums insured, are all expressed therein or thereupon.

Policy void if certain particulars not inserted.

The slip of paper on which risks specified at Lloyd's is not a policy.

On the trial of an action by an underwriter against a broker, for money received for premiums, one of the jury observed, that it was considered, at Lloyd's, that a party was bound by the slip of paper on which the underwriters usually put down the risks they had taken in the course of the day; but Lord *Kenyon* said, that however a man might be bound, in honour and good faith, he, certainly, would not be bound, in law, by such an instrument; if he was to

(*a*) *Roderick* v. *Hovil*, 3 Camp. 103. (*b*) Peake, 173.

enforce his claim in a Court of justice he must produce a stamped policy (*c*).

Duty must be paid on the fractional part of 100*l.* of every separate interest.

Where several owners are insured duty must be paid for the fractional parts of every separate interest.

An agent and shipper for six different sets of owners who divided between them, in different proportions, the whole interest of a cargo, but whose exact proportions were not known, effected an insurance for the full value, by a policy stamped, precisely, for the aggregate amount. When the different interests were afterwards ascertained, they were indorsed upon the policy, there being, in the case of every owner, a fractional part of 100*l.*; the duty, therefore, was not sufficient when calculated, as required by the Act, on each interest; and the policy, consequently, could not be received in evidence (*d*).

Alterations in policies.

The Stamp Laws are, in nowise, concerned in any question as to the effect of an alteration in an instrument, except where the alteration operates to destroy the original instrument, and to create a new one (*e*); so as to make a second stamp necessary, as for a second instrument. Any defect, therefore, arising from such circumstances, may be remedied by procuring a fresh stamp to be impressed, where the law allows of a re-stamping; but this not being permitted in the case of sea policies, it follows that an instrument of that kind, vitally affected by an alteration in it, cannot be made available. The law, however, as regards sea policies, is somewhat peculiar, a greater indulgence being allowed with respect to alterations made in them, than in other instruments; and it being, also, provided by the 35 Geo. III. c. 63, s. 13, that that Act shall not prohibit the making of any lawful alteration in the terms or conditions of any policy, or require any additional duty by reason of any such alteration; so that the same be made before notice of the determination of the risk, and the premium exceed 10*s. per cent.*, and the thing insured remain the property of the same person, and the alteration do not prolong the term beyond the time (twelve calendar months) thereby allowed, and no additional sum be insured.

Many cases have arisen in which the question of the effect of an alteration in a sea policy has been involved; and, in some of them, express reference has been made to the Stamp Acts; but, certainly, the grounds of the decisions are not, in every instance, readily perceptible; nor, perhaps, can all the cases be, without some difficulty,

(*c*) *Rogers* v. *McCarthy*, 3 Esp. 106.

(*d*) *Rapp* v. *Allnutt*, 15 East, 602.

(*e*) See p. 357, *ante*.

entirely reconciled; they seem, however, to admit of the deduction of certain general propositions, some of which may be classed with the regulations applicable to instruments in general. These propositions are here stated, although with much care, yet with much diffidence; the writer feeling doubtful as to the result of his attempt on so difficult a point.

General propositions.

Whilst the matter is *in fieri* an alteration may, with consent, be made (*f*).

In fieri.

To correct a mere mistake an alteration may be permitted, even in a material part; provided, as the policy originally stood, the assured had no interest, and there could, therefore, have been no risk (*g*).

To correct a mistake.

But no alteration can be allowed, in any such case, where the assured had an interest, and a risk had, therefore, been incurred (*h*); (the case not being within the 35 Geo. III. c. 63, s. 13).

An alteration, which is, perfectly, immaterial, and whereby the legal operation of the instrument is not affected, whether by consent or not, may be permitted (*i*).

Immaterial alteration.

The foregoing may be said to fall, in some measure, within the general rules applicable to other instruments.

In the following cases regard is had to the 35 Geo. III. c. 63, s. 13.

Where the alteration is within the terms of the Act:—

Within 35 Geo. III.

If it be made by consent it constitutes a new instrument, the original contract being superseded; and, as no new stamp is required, the altered instrument is good as to all consenting parties (*k*).

Made with consent.

If it be not made by consent the alteration is not available; but it may be treated as a proposal; and, therefore, as to those who do not consent, the policy, as it originally stood, still remains in force (*l*).

Not with consent.

Where the alteration is not within the terms of the Act:—

Not within 35 Geo. III.

Whether it be made with consent, or not, would seem to be quite immaterial; for, in either case, the original instrument is vitiated; and recurrence cannot be had to it, as against any party; but the

(*f*) *Robinson* v *Tobin*, p. 406

(*g*) *Sawtell* v. *Loudon*, *ib.*

(*h*) *Hill* v. *Patten*, *ib.*

(*i*) *Clapham* v. *Cologan*, p. 407; *Robinson* v. *Touray*, *ib.*

(*k*) *Kensington* v. *Inglis*, p. 408; *Ridsdale* v. *Shedden*, *ib.*, *Hubbard* v. *Jackson*, p. 409; *Ranstrom* v. *Bell*, *ib.*; *Weir* v *Aberdeen*, p. 410.

(*l*) *Fairlie* v. *Christie*, *ib.*, *Sanderson* v. *Symonds*, and *Sanderson* v. *McCullum*, *ib.*, *Forshaw* v. *Chabert*, p. 411; *Campbell* v. *Christie*, *ib.*

alteration would be available, as a new instrument, between consenting parties, if it could be re-stamped (*m*).

Cases.

The following is a statement of the cases which, it is conceived, authorize the foregoing classification.

In fieri.

An insurance was made "on the profits of goods valued at 500*l.*" It appeared, after the policy had been signed, that the interest was larger than had been supposed, and the policy was altered by a marginal note, *viz.* :—"On his share of the goods, say one-fifth, valued at 1000*l.*;" to which the defendant subscribed his initials. It was objected that the plaintiff ought not to have treated the whole as one entire agreement, but should have averred the original agreement, and have stated, specially, the insertion of the marginal memorandum. But Lord *Ellenborough* held, that at the time of the alteration all was *in fieri*, and that the whole constituted but one agreement (*n*).

To correct mistake.

Ship insured instead of goods; assured having no interest in the ship; alteration allowed.

A broker was instructed to effect an insurance on *goods* by a certain ship; but, by mistake, he effected it on the ship, in which the assured had no interest. After the ship had sailed the error was discovered, and on applying to the underwriters it was corrected, by a memorandum in the margin, stating the terms. This was distinguished from *Hill* v. *Patten*, where the insured was the owner and interested in the outfit; and the Court held that no new stamp was necessary; it was, clearly, a mistake; the original policy was only the semblance of a contract; it was no policy at all, since there was no risk (*o*).

Hill v. *Patten* (*p*) is as follows :—

Ship and outfit altered to ship and goods, assured having interest in all, not allowed.

A policy was effected on ship and outfit in a voyage upon the southern whale fishery. After the sailing of the ship it was discovered, that, owing to a misunderstanding between the broker and his principal, a mistake had been made in the insurance; and by a memorandum, indorsed on the policy, it was agreed to be altered to ship and goods, instead of ship and outfit. An action was brought on the altered policy; and it was determined that such an alteration was not within the 35 Geo. III. c. 63, s. 13; that, although the words "the thing insured shall remain the property of the same person," will apply to successive cargoes on board the same ship, in the course of the same continued adventure, they will not to a subject-matter of insurance essentially different from

(*m*) *Hill* v. *Patten*, 8 East, 373; *French* v. *Patton*, p. 411; *Langhorn* v. *Cologan*, p. 412.

(*n*) *Robinson* v. *Tobin*, 1 Stark. 336.

(*o*) *Sawtell* v. *Loudon*, 1 Marsh. 99; 5 Taunt. 359.

(*p*) 8 East, 373.

the thing first insured, the policy was, therefore, void, for want of a stamp.

Name of ship changed, alteration allowed, not material.

A policy was originally filled up on "The Three Sisters from Cadiz and Seville to Liverpool;" after it had been signed by the underwriters, words were added, and the policy stood thus: "Tres Hermanas or Three Sisters at and from Cadiz and Seville both or either to Liverpool." Some of the underwriters put their initials to the alteration, but the defendant refused to do so. The ship was originally a Dane; while at Seville, (on the present adventure,) her name was changed to the Tres Hermanas, and she was manned by a Spanish crew, commanded by a Spanish captain, and put under the Spanish flag. Lord *Ellenborough* held that the legal operation of the instrument was in no degree affected by the alteration (*q*).

Declaration of interest, not material; allowed.

An insurance was made on goods, by ship or ships from Archangel to London. It was, afterwards, declared, in the margin of the policy, by the agent, to be on the "Neptunus;" but this being discovered to be a mistake, the declaration was rectified, by altering the name to the "America;" and the underwriters were called upon to sign the following declaration: "The declaration of interest on this policy made 16th Oct. by the Tweende Venner and Neptunus is hereby cancelled, and, in lieu thereof, the following cargo per America is declared to form the interest, and is valued as follows," &c.—The defendant did not sign the declaration, but the other underwriters did. Lord *Ellenborough* was of opinion that the declaration of interest did not require any assent on the part of the underwriters; "they put their initials to it, not to express any assent, but to authenticate the declaration, and to prevent fraud. The declaration of interest is the mere exercise of a power by the assured, and is put upon the policy for convenience, but it is not necessary; nor need it be in writing. Here was a mere blunder in the name of the ship first declared, and it might be corrected without the assent of the defendant, and without a fresh stamp; the first declaration did not form part of the contract; it was a corrigible mistake, and it was corrected."

On a motion to set aside the verdict on the ground (amongst others) that the declaration was not on a fresh stamp, the Court refused a rule (*r*).

Time of sailing

A policy of insurance was underwritten on the 5th Feb., 1800,

(*q*) *Clapham* v. *Cologan*, 3 Camp. 382.
(*r*) *Robinson* v. *Touray*, 3 Camp. 157; 1 M. & S. 216.

by consent altered; allowed.

upon goods, and upon ship or ships sailing between the 1st Oct., 1799, and 1st June, 1800; by a memorandum indorsed, dated 6th May, 1800, it was agreed that the value of any vessel or vessels that should carry the goods, thereby insured, should be included in that assurance; and that the property which should first sail to the extent of 45,000*l.* insured, should be considered the interest in that insurance. And by another memorandum, written on the policy on the 11th June, 1800, the time of sailing was extended to the 1st August.

An objection was made to the want of a stamp on this latter memorandum, on two grounds; *First*, That it was made after notice of the determination of the risk, because it was made after the 1st June; but the Court was of opinion that this part of the objection was founded on a misapplication of the term;—*Secondly*, That it introduced a new subject of insurance, *viz.*, goods on board ships sailing after the 1st June; but the Court held that it had not this effect; the priority of sailing would ascertain the identity of the property; the extension of time only covering, with the protection of the policy, so much of the original subject of insurance as had not sailed before the 1st June; *viz.*, so much of the 45,000*l.* as should first sail, but had not sailed before that day; and that the priority of sailing would, equally, ascertain the identity of the vessel. The alteration, therefore, of the 11th of June was within the 35 Geo. III. c. 63, s. 13 (*s*).

The like.

On the 5th June a policy was effected "at and from Portneuf to London, warranted to sail on or before the 28th October, at six guineas *per cent.*; to return three *per cent.* for convoy." On the 29th November a memorandum was indorsed, "In consideration of six guineas *per cent.* additional premium we agree to annul the warranty of sailing, and agree to return the six *per cent.* if sails with convoy on or before the 31st October." Lord *Ellenborough* was of opinion that the 35 Geo. III. c. 63, s. 13, justified the alteration; the adventure remained the same, the contract was only modified, the alteration was "before notice of the determination of the original risk; the thing remained the property of the same person, and no additional sum was insured" (*t*).

Mark on goods and warranty withdrawn by consent; allowed.

A policy was effected at 4*l.* 4*s.* *per cent.* on hemp, marked B., and valued; with certain returns of premium on sailing with convoy upon arrival at certain places; and warranted to sail on or

(*s*) *Kensington* v. *Inglis*, 8 East, 273.

(*t*) *Ridsdale* v. *Sheddon*, 4 Camp. 107.

before the 20th August. By a memorandum indorsed, it was agreed that for 4*l.* 4*s.* additional premium, and allowing 5*s.* *per cent.* less return than stated in the policy, the mark on the hemp and the warranty should be withdrawn. It was held that these alterations might lawfully be made within the last-mentioned Act (*u*).

Alteration in destination by consent; allowed.

A policy was made at and from Stockholm to Swinemund. The ship sailed from Stockholm, but was obliged to put into Wisby, whence she sailed on the 9th October; whilst under repair there, the owners wrote from Stockholm on the 1st July, to their agents in London, informing them that the captain had orders, after the repairs were finished, to proceed to Konigsburg, as the French might be at Swinemund, which was the shorter and safer voyage; and requested them to arrange with the underwriters accordingly; who agreed to the alteration, and the words "Konigsburg or Memel" were inserted, after Swinemund.

The Court held that this alteration was made before notice of the determination of the risk; the assured had a purpose of change *ex justâ causâ;* and whilst it was in contemplation the proposal was made, and assented to (*x*).

The like.

Two policies, one on the ship Hebe, and another on the freight, were effected on the 30th June, 1825; that on the ship, "from Liverpool to Quebec during the ship's stay and loading there, and thence back to her port of discharge in the United Kingdom." Upon the policy on the ship the following memorandum was indorsed: "The Hebe being unavoidably detained beyond the intended time of sailing to Quebec, the voyage is changed, and the vessel proceeds from Liverpool to St. John's, New Brunswick, and at and from thence back to London; and in consideration of one guinea *per cent.*, additional, the company agree to continue the risk, until the vessel should be arrived back in London, or her port of discharge in the United Kingdom." The policy on the freight was at and from Quebec to the port of discharge; and a similar memorandum was indorsed, stating a voyage from St. John's to London. The Court was of opinion that the substitution of New Brunswick for Quebec was an alteration in the terms and conditions of the policy, within the 35 Geo. III. c. 63, s. 13, and that no new stamp was necessary.

It had been argued that if a port could be altered in one case, it

(*u*) *Hubbard* v. *Jackson*, 4 Taunt. 169.

(*x*) *Ramstrom* v. *Bell*, 5 M. & S. 267.

could in another; and that if a policy were, originally, made from one port to another in the United Kingdom, a port abroad may be substituted for one in the United Kingdom, and thus duty evaded (*y*); but the Court held that in such a case the alteration would not be lawful, without a new stamp, as the 35 Geo. III. c. 63, must be considered as incorporated in the 55 Geo. III. c. 184 (*z*). See page 2, *ante*, as to statutes *in pari materiâ;* and as to incorporating previous enactments in Acts granting new stamp duties.

Waiver of warranty of sea-worthiness by consent; allowed.

The following memorandum was made on a policy after the ship had sailed, and on finding that she was overloaded and not sea-worthy, *viz.*:—"It is agreed that the Prince Coburg may load, unload, and re-load goods, and discharge part of her cargo at Ramsgate." This was held not to require a new stamp; it was a waiver of the warranty of sea-worthiness (*a*).

Time of sailing altered without consent—treated as a proposal.

In a policy effected on ship or ships sailing on or before the 10th Oct., 1814, the words "10th October" were subsequently struck through with a pen, and the words "31 Dec." inserted in the margin. Some of the underwriters consented to this alteration, but the defendant did not. *Gibbs*, C. J., observed, that a policy was not like a bond or bill which would have been void by such an alteration. In *French* v. *Patton* (*b*) the policy was altered by consent, and the second would have been good but for the Stamp Laws, and the plaintiff was not permitted to resort to the first, having merged it in the second; he thought the alteration might be considered as a proposal, made by the assured to the underwriters, which, if acceded to, was to be the contract between them; and if not adopted by any underwriter, the policy was to remain in its original state, as to him. His Lordship was of opinion that the plaintiff was entitled to recover, but he gave the defendant leave to move to enter a nonsuit (*c*).

So where liberty to trade added without consent.

On an insurance on ship from Liverpool to her port, &c., in Africa, with liberty to touch and stay at any ports, and to sell, barter, and exchange goods, &c., the words, "sell, barter, and exchange goods," were interlined in the policy, and so were the words "and trade," in another part. No evidence was given when the interlineations were made; but the defendant signed his initials

(*y*) Until the 7 Vict. c. 21, the duties were higher in respect of foreign than coastwise voyages.

(*z*) *Brocklebank* v. *Sugrue*, 1 B. & Adol. 81.

(*a*) *Weir* v. *Aberdeen*, 2 B. & Ald. 320.

(*b*) Page 411.

(*c*) *Fairlie* v. *Christie*, Holt, 331.

to the former, and produced evidence that the words "and trade" were not inserted when he subscribed the policy. The Court held that this alteration was an immaterial one; the vessel having liberty to trade without it. Those who set their initials to the alterations were liable, but those who did not consent were liable only on the original contract; the parties being at liberty to adopt the alterations, or not (*d*).

Risk increased by adding leave to call at a port, without consent; not allowed.

An insurance was effected on ship and goods "at and from her port or ports of lading in Cuba to Liverpool," with liberty "in that voyage to proceed and sail to, and touch and stay at any port or ports; and with leave to discharge and take in at such ports, &c." After the subscription of the policy the words "with leave to call off Jamaica," were inserted after the word "Liverpool." All the underwriters sanctioned the alteration except the defendant, who, being ill, was not applied to. It was proved that the alteration was material, as it increased the risk, by allowing the ship to call for any purpose whatever; but the jury found for the plaintiff. On a motion for a new trial the Court held, that although the captain might, without special leave, have been justified by circumstances in touching at Montego Bay, yet the alteration was material, and void, as against the defendant; a new trial was, therefore, granted (*e*).

Place of destination altered without consent; not allowed.

In a policy from Calmar to Portsmouth the words "or Weymouth" were inserted by the plaintiff in the presence of several of the underwriters, but without the knowledge of the defendant. For the plaintiff, the exception in the 35 Geo. III. c. 63, and the case of *Hill* v. *Patten* were referred to; but Lord *Ellenborough* observed, that in that case there was the consent of all the parties; and that, without such consent, the alteration avoided the policy. On its being proposed to prove that the defendant, subsequently, said he would not take advantage of the alteration, his Lordship said that made no difference (*f*). It is questionable, with the writer, whether this last case and that of *Langhorn* v. *Cologan*, mentioned below, should not change places in the classification; or both be put in the same class.

Original policy, destroyed by

French v. *Patton* (*g*) was an action on the same policy as that in *Hill* v. *Patten* (*h*), the plaintiff declaring on the policy for

(*d*) *Sanderson* v. *Symonds*, 1 B. & B. 426; 4 Moore, 42; *Sanderson* v. *McCallum*, 4 Moore, 5.

(*e*) *Forshaw* v. *Chabert*, 6 Moore, 369.

(*f*) *Campbell* v. *Christie*, 2 Stark. 64.

(*g*) 1 Camp. 72; 9 East, 350.

(*h*) Page 406, *ante*.

alteration, cannot be restored.

"ship and outfit," endeavouring to establish it as it originally stood; but the Court held that the alteration was made, not by a stranger, but by a party having authority; and that it was effectual to bind all parties, but wanting one circumstance to give it legal effect (*i*); and though such altered instrument was ineffectual, as an instrument to sue on, it was effectual to do away the former agreement, which was thereby abandoned.

Description of goods—not by consent; alteration material.

In *Langhorne* v. *Cologan* (*k*), the defendant, with others, underwrote a policy "upon any kind of goods and merchandises, and also upon the body, tackle, ordnance, &c., of and in the good ship —— at and from London to any port or ports in the Baltic," no description of goods being inserted, nor any value declared. After the subscription, the plaintiff inserted the words, in a blank which occurred in the printed form, "100 hogsheads of fine sugar," and other specific goods; the initials of several of the underwriters were set against the alteration, but not those of the defendant. The Court held that the alteration was material, and that as to those who did not assent the instrument was gone.

Only one stamp necessary on agreement to refer.

The underwriters on a policy have such a community of interest as to render one stamp, only, necessary on an agreement to refer matters in dispute relating to the insurance; and on the award to be made thereunder (*l*).

Policy made after the loss.

The circumstance of a policy being executed after the loss it was intended to insure against has happened, can give rise to no objection on the Stamp Laws (*m*).

(*i*) A fresh stamp.
(*k*) 4 Taunt. 330.
(*l*) *Goodson* v. *Forbes*, 1 Marsh. 525.
(*m*) *Mead* v. *Davison*, 1 H. & H. 156.

Lease.

PREVIOUSLY to the 44 Geo III c 98, there was no separate stamp duty on a lease, that instrument was, however, charged by name, from the time that stamp duties were first introduced, a duty being imposed on every "indenture, lease, bond, or other deed" These duties, as they were from time to time granted, will be found in a separate table in a subsequent part of this work See INDEX, "DUTIES"

Duties on leases before the 44 Geo. III c 98

By the 44 Geo III c 98, (commencing 11th October, 1804,) the stamp duties then existing were all repealed, and a duty of 1*l* granted on certain leases in the following terms, *viz* —

"LEASE of lands, or tenements, for a term not exceeding twenty-one years, when the full improved annual value thereof, and rent reserved thereby shall not be more than 10*l*, or for a life or lives, or for years determinable on a life or lives, where the fine or consideration shall not exceed 20*l* and the reserved rent shall not exceed 40*s*, upon any number of words not amounting to thirty common-law sheets (seventy-two words each) of which any lease shall consist," with a progressive duty, of the like amount for every entire quantity of fifteen sheets, over and above the first fifteen

Duties under the 44 Geo III c 98

All other leases were charged with a duty of 1*l* 10*s*, and similar progressive duties of 1*l* under the head "DEED," with the following

Exemption

Lease of waste or uncultivated land to any poor or labouring man, for any term not exceeding three lives, or ninety-nine years, when the fine does not exceed 5*s*, and the reserved rent one guinea *per annum*

By the 48 Geo III c 149 (commencing 11th October 1808), the foregoing duties were repealed and the following granted in lieu, *viz* —

	Duty £	s	d
LEASE or TACK of any lands, hereditaments, or heritable subjects, for a term not exceeding twenty-one years, at a yearly rent of 10*l* or less, and without any fine or grassum paid for the same	1	0	0
LEASE or TACK of any lands, hereditaments, or heritable subjects, for a life or lives, or for a term of years determinable with a life or lives, or for a term absolute not exceeding forty years, in consideration of a fine or grassum paid for the same not exceeding 20*l*			
If the rent reserved or stipulated shall not exceed 40*s*	1	0	0
If it exceed 40*s*	1	10	0

Duties under the 48 Geo III c 149

	Duty. d.
LEASE or TACK of any kind, not otherwise charged .	10 0
And for the counterpart or duplicate of any Lease or Tack charged with a duty of 1*l.* the like duty of . .	1 0 0
Of any other	1 10 0
With progressive duties of 1*l.* each, for every fifteen folios after the first.	

There will also be found the following

Exemptions from all Stamp Duties.

Leases or tacks of waste or uncultivated lands to any poor or labouring persons for any term not exceeding three lives or ninety nine years, where the fine shall not exceed 5*s.* nor the reserved rent one guinea *per annum;* and the counterparts or duplicates of all such leases.

A demise, where a fine is paid, is a sale *pro tanto;* the instrument of demise, therefore, in every such case, where not otherwise charged, nor exempted, fell legitimately, under the head "CONVEYANCE" in the 48 Geo. III. c. 149, without the necessity for any express mention of it, and was chargeable with duty as a conveyance upon sale. This is clear from the "*Exemptions* from the duties on conveyances upon the sale of lands, &c.," under the title "CONVEYANCE," the first of which is as follows, *viz.*:—

"All leases and tacks of lands, hereditaments or heritable subjects for a life or lives, or for a term of years determinable with a life or lives, or for a term absolute not exceeding ninety nine years, in consideration of a fine or grassum paid for the same; which leases and tacks are hereinafter otherwise charged."

In *Roe dem. Larkin* v. *Chenhalls* (*a*), it was contended that a demise for three years, at a pepper-corn rent, in consideration of 300*l.* was chargeable with stamp duty as a conveyance under this Act, it being properly a sale, and not a letting; but the Court held, that it was a lease upon a fine, within the exemption. The decision was, no doubt, perfectly correct, the instrument being, in point of law, a lease, but, although a lease, it was nevertheless, a conveyance on sale; and would have been so charged but for the exemption. Upon this point there can be no question under the present Stamp Act, 55 Geo. III. c. 184, leases being expressly included amongst the instruments specified under the head "Conveyance," and referred to that head of charge from the title "LEASE," in cases where a fine or grassum is paid. The remark of Mr. Justice *Dampier* may be adverted to, in order to show the erroneous view sometimes taken of the practical operation of the

(*a*) 4 M. & S. 23.

Stamp Acts. That learned Judge observed, that "if *ad valorem* duties were payable on Ecclesiastical Leases, the Stamp Office must have been very negligent in all the numerous instances of Ecclesiastical Leases since the statute in question, in not requiring the payment of such duty."

Whether a demise, or an agreement only.

Heretofore, on the production of instruments to be stamped, scarcely any point was of so frequent occurrence as the question, whether the writing was a lease, or an agreement only. Questions of the same kind have, from time to time, also occupied the attention of the Courts of law, whose decisions afford a guide in coming to a conclusion as to the stamp duties paying in such cases. This fruitful cause of dispute, or difference, is, however, now, for the most part, removed by the simple enactment contained in the late Act, 8 & 9 Vict. c. 106, s. 3, (repealing the 7 & 8 Vict. c. 76,) which provides that a lease required by law to be in writing, of any tenements or hereditaments, shall be void at law, unless made by deed (*b*).

But this provision, however extensive its operation may be, will not entirely get rid of the question whether the writing be a lease or not; it being, by no means, a rare occurrence, for an instrument to be produced to be stamped, prepared by an unskilful person, but completed without regard to, and in total ignorance of the consequences, with all the formalities of a deed, where the object in contemplation might have been carried out by a mere agreement under hand only; and although no agreement made after the 1st January, 1845, containing words of present demise, can, except in cases (*c*) where a lease is not required by law to be in writing, operate as a lease, unless it be a deed, the converse does not follow, that every deed containing an agreement to let must, necessarily, be a lease; the point, therefore, will, occasionally, yet, occur; and for this reason, and because the Act alluded to is not retrospective, and does not extend to leases not required by law to be in writing, regard must still be had to the cases already decided upon the point.

The words "required by law to be in writing," contained in the Act alluded to, have an important effect not, generally, understood, and, probably, in reference to the stamp duties, not contemplated by the framers of the Act. It will be proper to make an observation upon the point. The statute 7 & 8 Vict. c. 76, which was in operation only from the 1st January, 1845, to the 1st October fol-

(*b*) See page 276, *ante*. (*c*) Since 1st Oct. 1845.

lowing, declared all leases, in writing, without exception, invalid, unless made by deed. This was considered, no doubt, as going too far, as it made void leases in writing, under hand only, which, if made by parol, would, by reference to the Statute of Frauds (*c*), be good in law, *viz.*, leases for terms not exceeding three years from the making; the enactment was, therefore, repealed by the 8 & 9 Vict. c. 106, which declared, in lieu, that a lease *required, by law, to be in writing*, of any tenements, or hereditaments, should be void in law, unless made by deed. Thus, leases for the period mentioned, are, it will be observed, excluded from the operation of the Act; consequently, a written agreement, under hand, only, to let, or containing any words constituting a present demise, for that or any less period, is, still, a lease, and must be stamped, accordingly.

Whilst upon this subject, it may be useful to remark, that the construction put upon the Statute of Frauds, in reference to the period of three years alluded to, is, that the term is to be reckoned from the time of making the lease, and not from any subsequent date; so that a lease for three years, to commence on a future day; or for any shorter term, but to expire at a time beyond three years from the making, is not within the exception in that statute, and is, therefore, one required by law to be in writing; and, to be valid, must, now, be by deed (*d*).

To state authorities for the purpose, merely, of showing that a lease might have been granted, and surrendered, by writing not a deed, before the 1st January, 1845, would be deemed a work of supererogation; should any be, however, desired, the reader is referred to the early cases of *Farmer dem. Earl* v. *Rogers* (*e*), *Harker* v. *Birkbeck* (*f*), and *Beck dem. Fry* v. *Phillips* (*g*). Nearly all the cases brought to notice under this head, may, indeed, be said to establish, or acknowledge the fact.

With regard to the stamp duty on a surrender or assignment, it may be remarked that none was charged prior to the 44 Geo. III. c. 98, unless where the instrument was a deed (*h*), which was not, as already observed, the case with a lease.

Words of demise.

The point, whether the words made use of amount to an actual demise or not, is admitted to be one of some difficulty; and an attempt to reconcile all the cases upon it would not, perhaps, be

(*c*) 29 Charles II. c. 3.

(*d*) See *Rawlins* v. *Turner*, 12 Mod. 610, and Lord Raymond, 736.

(*e*) 2 Wils. 26.

(*f*) 3 Burr. 1556.

(*g*) 5 Burr. 2827.

(*h*) *Hodges* v. *Drakeford*, 1 N. R. 270.

attended with success; some general propositions may, however, be stated, as deducible from them.

Rules of construction.

No particular form of words is essential to constitute an immediate demise; the intention of the parties, to be collected from the whole instrument, is to be the governing principle in the construction of it. Any writing evidencing an intention in the parties that one of them shall occupy the land of the other on definite terms, the instrument not being executory, is a lease, although a more formal document may be in contemplation, and a stipulation for it introduced (*i*). Nothing, however, which may have happened subsequently to the signing of the agreement can, of course, be allowed to affect it, so as to make absolute that which was executory, or *vice versâ*; and, therefore, a mere agreement to let, will not be converted into an actual lease, by occupation under it, although it may have served the purpose of a lease (*k*); at the same time, the acts of the parties may be adverted to, as a means of assisting in the interpretation of their object and intention (*l*).

The term "agree to let," and similar expressions, amount to an actual letting, and are not controlled or limited in their operation by a mere agreement, in the same writing, to grant a lease, unless the contrary appear to be the intention of the parties (*m*). Lord Chief Baron *Gilbert* observed, "If the most proper and authentic form of words whereby to describe and pass a present lease were made use of, yet, if, upon the whole deed, there appeared to be no intent, but that they are only preparatory and relative to a future lease to be made, the law would rather do violence to the words than break through the intent."

An express proviso that the writing shall not be construed to operate as a lease will regulate the operation accordingly (*n*).

As the decisions upon the point under discussion, and of which the foregoing rules are, in general terms, stated as the result, have been come to upon the particular words and circumstances in the respective cases, it has been considered advisable to state the facts of every case, at some length. The endeavour has been to arrange them in the order best adapted for reference, and for exemplifying the propositions made.

Cases of pre-

The cases first extracted are those of agreements to let, in which

(*i*) *Morgan* v. *Bissell*, 3 Taunt. 65; *Doe dem. Hughes* v. *Derry*, 9 C. & P. 494.

(*k*) *Phillips* v. *Hartley*, 3 C. & P. 121.

(*l*) *Doe* v. *Ries*, page 420, *post*; *Chapman* v. *Bluck*, page 422, *post*.

(*m*) See Bac. Abr. title *Lease* (K).

(*n*) *Perring* v. *Brooke*, 7 C. & P. 360.

sent demise where formal leases are agreed to be granted.

allusion is made to a more formal instrument; and, in stating them, those will be first mentioned in which the Courts have held the agreements to amount to a present demise.

Before the Statute of Frauds, if one said, "You shall have a lease of my lands in D. for twenty-one years, paying therefor 10*s.* *per annum;* make a lease thereof, and I will seal it," this was a good lease by parol, the making of it in writing being but for further assurance (*o*).

In *Harrington* v. *Wise* (*p*) articles were made under seal, in two parts, executed by the plaintiff and defendant respectively, whereby it was covenanted that the plaintiff "doth let certain lands to *W.* for five years, to begin at the feast of St. Michael next following; and that *W.* shall pay annually 120*l.*" and the parties further covenanted that a lease should be made and sealed according to the effect of the articles. It was held that this was, itself, a good lease.

In *Tisdale* v. *Essex* (*q*), the defendant covenanted with the plaintiff, that the latter should have, occupy, and enjoy certain land, for a term of seven years, from a period fixed, at a certain rent; and that he, the defendant, would make as good and perfect a demise or security for quiet enjoyment as counsel should think fit; the Court adjudged the instrument a lease: "Here are a certain term from the beginning, certain rents and covenants importing present possession, and the covenant following is but *in majorem cautelam.*"

A. and *C.* entered into an agreement with *B.* to the effect following, *viz.*:—"With all convenient speed to grant a lease to the said *B.*, and they do hereby let and set to him all, &c.; provided that the said lease shall be void on non-payment of rent, &c.; and that such lease shall contain the usual covenants," and certain special ones therein mentioned, in one of which the words "this demise" occurred. This was held to be a demise *in presenti*, with an agreement to execute a more formal and perfect lease (*r*).

In *Barry* v. *Nugent*, cited in *Roe* v. *Ashburner* (*s*), the following agreement was produced, *viz.*:—"Be it remembered, that *J. B.* hath let, and by these presents doth demise, &c. Leases with power of distress and clauses for re-entering, and all other clauses

(*o*) *Maldon's case*, Cro. Eliz. 33.
(*p*) Cro. Eliz. 486.
(*q*) Hob. 34.
(*r*) *Baxter dem. Abrahall* *Browne*, 2 W. B. 973.
(*s*) Page 424, *post.*

usual, to be drawn and signed at the request of either party as soon as *J. B.* recovers the land from *M. O.*," &c. This was held to operate as a lease

In *Poole* v. *Bentley* (*t*), the agreement was as follows, *viz.* :— "Memorandum, 12 June, 1806, between *J P* and *P. B.* The said *J. P.* hereby agrees to let unto *P. B.*, and the said *P. B.* agrees to take all that, &c., for the term of 61 years from Lady Day next, at the yearly rent of 120*l.*, free and clear of all taxes, parliamentary or parochial, except landlord's property-tax, the present land-tax being redeemed; the said rent to be paid quarterly, the first quarter's rent within 15 days after Michaelmas, 1807; and that for and in consideration of a lease to be granted by the said *J. P.* for the said term, the said *P. B.* agrees, within the space of four years from the date hereof, to expend and lay out in five or more houses, of a third-rate class of building, 2000*l.*; and the said *J. P.* agrees to grant a lease or leases of the land and premises as soon as the said houses are covered in; and the said *P. B.* agrees to take such lease or leases, and to execute a counterpart or counterparts thereof; the said *J. P.* to take away all the glass of the greenhouse, &c. This agreement to be considered binding till one, fully prepared, can be produced."

This was held to pass a present interest in the land, and to operate as a demise. The leases to be afterwards granted were only by way of further security, present possession was given, houses were to be built, and the agreement to be binding till another was executed.

The same was also held in *Doe dem. Walker* v. *Groves* (*u*), where *T. W.* by an agreement in writing agreed to let, and, also, upon demand, to execute a lease of lands to *E. G.*; and *E. G.* agreed to take, and, upon demand, to execute a counterpart of a lease of the same lands for fifteen years, at the rent of 147*l.*; the lease to contain the usual covenants; the agreement to be binding until the lease was made and executed.

In *Wilson* v *Chisholm* (*x*), Mr. Justice *Gaselee* thought the following a lease, *viz.* :—"Memorandum of agreement made, &c. witnesseth, that *J W.* doth hereby agree to let the house No. 17, &c., to *T. C* on lease for seven years from Lady-day next, at the net rent of 45*l. per annum*, payable quarterly, free and clear from all taxes and rates whatsoever, and subject to all stipulations and

(*t*) 2 Camp. 286; 12 East, 168. (*u*) 15 East, 243.
(*x*) 4 C. & P 474

covenants that are contained in the original by which *J. W.* holds, and to keep the stipulations in every respect until the lease be granted; which lease, when required by *T. C.* shall be prepared by the solicitor of *J. W.*, but at the costs and charges of *T. C.* To all the before-mentioned conditions the said *T. C.* agrees."

The question of an instrument being a lease or an agreement was fully gone into in the case of *Doe dem. Pearson* v. *Rtes and Knapp* (*y*). The instrument was as follows, *viz.*:—"*K.* agrees to let, and *P.* agrees to take, all that house, &c., for the term of sixty years or thereabouts, being the whole term *K.* has, at the yearly rent of 525*l.* clear of the land tax, &c., now or hereafter imposed; the rent to be paid quarterly, the first payment to be made for the half-quarter at Christmas next. *P.* agrees to insure in the joint names of *P.* and *K.*; the said lease and counterpart to contain all the clauses, &c., that *K.* has entered into and agreed upon in the lease granted to him. *P.* to have the benefit of the insurance which has been lately paid without any charge for the same."

The Court deemed this not executory, but to convey a present interest, and to amount to a lease; the words of the instrument and the acts of the parties are to be looked to in order to ascertain the intention; the words "agrees to let" are settled as words of present demise, and a stipulation for a future lease has been held not to render the agreement executory, unless where the terms have been unascertained, which is not the case here; then the party is put into possession, and the circumstance of the tenant taking the former insurance shows that he was to be responsible from the time of the transfer.

Hancock and another, Assignees, v. *Caffyn* (*z*), was an action for allowing the bankrupt, *Nicholls*, to be distrained on by his superior landlord, the defendant himself having also made a distress for rent alleged to be due from the bankrupt. The following was the purport of the agreement between the defendant and *Nicholls*, *viz.*:—The defendant agreed to sell to *Nicholls* the furniture, &c., in the house thereinafter agreed to be demised; and he covenanted and agreed with *Nicholls* that he would, immediately after full payment of 1200*l.* (the balance of the purchase-money), and interest, well and effectually, by indenture, demise and lease to *Nicholls*, the house, &c. in question, to hold for twenty five years at 250*l.* rent; and it was agreed that in such indenture there should be contained the like covenants as in the lease by which the

(*y*) 8 Bing. 178. (*z*) 1 Moore & Scott, 521.

defendant held; then followed covenants by *Nicholls* to purchase the furniture, &c, and to execute a counterpart, and that until the lease should be granted he would pay to the defendant the said yearly rent, and keep all the covenants which would be to be performed and kept by him in case the lease was actually granted; provided that if, before the lease should be granted, the rent should be unpaid for fourteen days, it should be lawful for the defendant to enter and distrain and take away the distress, and otherwise act therein as if the lease had been actually granted. It was objected that this was executory, and that the relation of landlord and tenant did not exist; but the Court considered that, although, in the main purport of it, the agreement appeared to be executory, and although, after payment for the furniture, the demise was to be by indenture, *Nicholls* was to have immediate possession, and rent was to run from the period when the agreement was entered into; and the agreement contained all the terms and conditions of holding; the relation, therefore, of landlord and tenant was held to exist in the interval; rent was to be paid *eo nomine*. But if any doubt arose, the defendant had put an end to it by distraining, for there could be no legal distress unless such relation existed.

The last reason is not perhaps very satisfactory, seeing that there was an express agreement to distrain, which would not be necessary in case of the actual existence of the relation of landlord and tenant; and the fact of such special agreement was in *Bicknell* v. *Hood* (*a*), stated to be one reason (and it was probably the best) why it was not intended that such relation should, in that case, exist.

An agreement whereby *A.* agreed to let to *B.* for a term of 7, 14, or 21 years, two attached messuages, &c., at the rent of 24*l.* payable quarterly, &c., *B.* to paint the inside every 7 years and the outside every 5 years, and to keep the same in repair, &c., *B.* to pay all the expenses of preparing a lease for either of the terms specified, was held to amount to a lease (*b*).

On the trial of the ejectment, *Doe dem. Phillip and Walters* v. *Benjamin* (*c*), the defendant set up a lease from *Phillip* to her husband, under whom she claimed, dated 10 Dec. 1836, made subsequently to a lease of the same premises granted by *Philip* to *Walters*, dated in Nov. 1835; which lease to *Benjamin* recited the following agreement, *viz.*:—"Memorandum of Agreement

(*a*) Page 428, *post*.
(*b*) *Warman* v *Faithful*, 5 B. & Ad. 1042; 3 N & M 137.
(*c*) 9 A. & E 644; 1 P. & D. 440.

made the 13th Dec., 1834, between *J. Phillip* of the one part, and *W. Benjamin* of the other part. The said *J. P.* agrees to let the farm, &c., to the said *W. B.* for the term of fourteen years, determinable at the end of seven, at the option of either party, at or for the rent of 20*l.*, payable half-yearly. A lease to be drawn upon the usual terms by Mr. *B.*, and the said *W. B.* agrees to take it upon the said terms." The lease of Dec., 1836, was objected to as unavailing, by reason of the previous demise to *Walters*, whereupon the agreement of Dec., 1834, was set up by the defendant as a lease, and admitted accordingly, no objection being taken to it that it was stamped only as an agreement, and a verdict was returned for the defendant, with leave to move to enter a verdict for the plaintiff.

On a motion being made, the Court held the instrument of Dec., 1834, to be a lease, and that an objection then taken to the insufficiency of the stamp was too late; it should have been taken at the trial.

In *Chapman* v. *Bluck* (*d*), certain letters which passed between the parties were read to prove a demise; *viz.* :—On the 21st Feb., 1834, the plaintiff wrote to the defendant thus:—"You having this day agreed to let, I beg to say that I will take the farm for 100*l.* the first year, and after that 110*l.*; the rent to commence Michaelmas last, &c.; as to the buildings I will do all the casting materials, and you to build up the barns; the outlay not to exceed 250*l.*; and I will engage to take it in the usual way, to be valued by two persons, &c., and to pay you the amount of such valuation, on my taking possession; and further, that I will take a lease of twenty-one years at my expense; the original to remain with your solicitor; he to furnish both parties with a copy; to contain the usual covenants, &c.; the whole to be subject to your being satisfied as to my responsibility, to ascertain which I refer you to *D. R. M.*" On the 25th Feb., the defendant wrote to the plaintiff as follows:—"Mr. *M.'s* letter reached me this morning, and as it is satisfactory, I hereby engage to accept of you as my tenant agreeably to the terms of yours of the 21st inst., &c." There was some further correspondence as to the valuation; but upon payment of 100*l.*, the plaintiff was let into possession. The Court, looking at the letters alone, considered that there was a present demise; but the acts of the party were also confirmatory of this view.

(*d*) 4 Bing. N. C. 187, 1 Arn. 27.

E. S., in 1782, being seised in fee of a house at Hungerford, entered into an agreement with the parish officers to the effect following, *viz.*—"Be it remembered that it was agreed, &c., 1st, That *E. S* doth hereby agree to demise and let unto the committee in trust for the inhabitants at large, and the committee do hereby agree to accept and take of the said *E. S.*, all that messuage, &c., which are intended to be converted into a poor-house; to hold from the 25th March next coming, for and during the term of 99 years, at and under the yearly rent of 27*l.*, payable half-yearly; and the committee agree to pay the rent and all taxes, &c., and to keep the premises in repair, and the parties do agree that a lease and counterpart shall be prepared and executed on or before the 1st January next; covenants and agreements pursuant to this present contract, and such other general clauses as are usually contained in leases. Provided that in case the committee, or their successors, think it a more eligible plan to purchase the premises in fee at 420*l.*, then the said *E. S.* shall convey the same." The Court held this to be a present demise (*e*).

By instrument under seal and stamped as a lease, *W.* in consideration of the rents, covenants, and agreements therein reserved on the part of *C.*, to be paid, &c., covenanted, promised and agreed, at any time during the term thereinafter agreed to be demised, upon request made in writing, to grant and execute to *C.*, and *C.* consented and agreed to accept, and execute a counterpart of a good and effectual demise or lease of certain premises for the term of twenty one years, from a day past, determinable as therein mentioned, at a certain rent payable quarterly; and *C.* thereby covenanted to lay out a certain sum in repairing, &c.; and it was agreed that there should be contained in the lease covenants to pay rent, repair, for quiet enjoyment, &c., and an agreement to determine the tenancy as therein mentioned. This was held to be an actual demise (*f*).

Words of present demise controlled by agreement for future lease.

THE FOREGOING are cases where the circumstance of a lease to be executed was held not to affect the words of present demise in the same instrument; the following are instances in which these words were held to be controlled by a contract to grant a future lease.

(*e*) *Alderman* v. *Neate*, 4 M. & W. 704, II & II 369.

(*f*) *Curling* v. *Mills*, 7 Scott, N. R. 709.

Sturgeon v. *Paynter* (*g*) was the foundation of the opinion, that an agreement that a lease should be executed *in futuro*, superseded the operative words of present demise, although accompanied with immediate possession.

The first decision founded on *Sturgeon* v. *Paynter* was that in *Goodtitle dem. Estwick* v. *Way* (*h*). Articles of agreement were entered into between Lord *Abingdon* and *Richard Way*, for the sale of certain goods; and it proceeded thus: "And further the said Earl doth hereby agree to let, and the said *R. W.* agrees to rent and take for the term of 7, 14, or 21 years, in case the said Earl shall so long live, at and for the rent of 1400*l.* per year, &c., all his estate at, &c. It is agreed that the said *R. W.* shall enter upon all the premises immediately, but not commence payment of rent till Lady Day next. It is further agreed that leases with the usual covenants shall be executed by the parties on or before Michaelmas next." The Court held that this was not a lease; there was an express stipulation that leases should be drawn before Michaelmas, therefore it plainly was not the intention that it should operate as a lease, but only that it should give the defendant a right to immediate possession till a lease should be drawn.

On the 4th Oct., 1786, an agreement was entered into between *Thomas Tidd* and *Thomas Clare*, reciting that *Mary Statham* was entitled to certain copyhold property for her life, and that *Tidd* had agreed, that in case, on the death of *Statham*, he should be seised of or entitled to the premises, he would immediately demise and let the same to *Clare*; on the terms and conditions thereinafter mentioned, *Tidd* did thereby agree to demise and let unto the said *Clare* all such copyhold premises as he should become entitled to from the death of *Mary Statham*, for 21 years; and *Clare* covenanted to take the same, and lay out before the expiration of the term 150*l.* in repairs, &c., and keep the premises in repair, &c. And *Tidd* agreed, on the death of *Statham*, to procure a licence to let the premises. Lord *Kenyon*, on the trial of an ejectment against *Clare*, held this to be a lease; but on a motion for a new trial he admitted that he was wrong; it was held to be an executory agreement; if a lease, a forfeiture would have been incurred; which the parties had cautiously guarded against (*i*).

In *Roe dem. Jackson* v. *Ashburner* (*k*), the lessor of the

(*g*) Noy, 128.
(*h*) 1 T. R. 735.
(*i*) *Doe dem. Coore* v. *Clare*, 2 T. R. 739.
(*k*) 5 T. R. 163.

plaintiff claimed under an agreement of the following purport, *viz.*—"March 4th, 1783. Articles of agreement between *T. W. S.* and *D. J.*, entered into in regard to his fulling mills, &c. The said mills he shall enjoy, and I agree to give him a lease for the term of 31 years from Whitsuntide, 1784, &c., and that I will purchase one yard in breadth to be laid to the race from the High Clews, the length of Charles close; and if it be bought, and the purchase is more than 200*l.* per acre, *D. J.* to pay more than it costs beyond. The old counting-house to be brought out as far as the engine-house, &c. *D. J.* engages to keep the mills in repair." It was held that this was not an absolute demise; it was clearly the intention that there should be another instrument; besides, the landlord was to acquire other ground, without which the lease was not to be granted.

The following was held to be an executory agreement and not a lease, *viz.*—"3rd March, 1778, agreed to let to Mr. *S.* my house, &c., at the yearly rent of 30 guineas, he paying taxes; also an inclosure called, &c., at the yearly rent of 7*l.* The above agreement to continue during my life, supposing it to be occupied by himself or a tenant agreeable to me. A clause to be added in the lease to give my son a power to take the house for himself, if he chooses, when he comes of age" (*l*).

In an action by a landlord against his tenant an agreement to the effect following was produced, *viz.*—"Conditions for letting four farms after mentioned, &c. The term to be from year to year; the lands to be entered upon on the 3rd Feb., 1808, and the housing on the 12th May. Six months' notice to quit." Then, after stating certain regulations to be observed, not affecting the question, it proceeded—"a lease to be made upon these conditions with all usual covenants." At the foot was written—"I agree to take Lot 1 at the rent of, &c., subject to the covenants." It was signed by the defendant, and dated 24th Nov. 1807. This was determined to be an agreement only (*m*).

In *Dunk* v. *Hunter* (*n*), in replevin, the point arose on an instrument to the following effect, *viz.*: "*A. H.* agrees to let to *D. D.* on lease, with a purchasing clause, for 21 years, all that house, &c.; *D. D.* entering on the premises any time on or before the 11th Feb. 1820, at the net rent of 63*l. per annum*, and to keep the premises in repair, paying, on entering, 50*l.*; the rent payable quarterly;

(*l*) *Doe dem. Broomfield* v. *Smith*, 6 East, 529.

(*m*) *Tempest* v. *Rawling*, 13 East, 18.

(*n*) 5 B. & Ald. 322.

the term for 7, 14, or 21 years; Mr. *D.* to give one clear year's notice before the expiration of either of the above terms of years if he intends to leave; if purchased before the expiration of the term by *D. D.* he is to pay on purchase 1000 guineas." The plaintiff paid 50*l.* on the 10th Feb. but did not enter till the 16th April; no rent was paid, and the defendant distrained. The Court determined that this was only an agreement to grant a lease; they could not infer when the tenancy was to commence, or the rent become due; and the circumstance of a reference to a clause to purchase showed that another instrument was contemplated.

A memorandum, "*A. P.* agrees to grant and *A. H.* agrees to take a lease of, &c., for, &c., at the yearly rent, &c., &c.," was held not to be a lease (*o*).

In *Regnart* v. *Porter* (*p*), the following instrument was produced:—"*T. P.* agrees to let on lease and *P. R.* agrees to take, and execute a counterpart, of the house, &c., for a term of 60 years from Midsummer next, at the rent of 25*l.*; such lease to contain the same covenants as the other leases granted by *H. C. S.*; and the said *T. P.* agrees to complete the said house, fit for habitation, and to allow *P. B.* 15*l.* towards erecting an oven, &c.; and each party doth bind himself to perform and execute the aforesaid covenants and agreements." The landlord had never performed his part by completing the house; and the Court held that there was no present demise.

The fact of the house not having been completed could not, certainly, affect the original intention of the parties as to the character and operation of the instrument, but the circumstance of its being to be done showed the intention.

Articles of agreement were made, whereby *C. P. H.* agreed to grant, at the time thereinafter mentioned, unto *C. H.*, a lease of a certain piece of ground, for 59 years and a quarter; and within four months to erect a dwelling-house and other buildings thereon; and the said *C. H.* agreed to accept and take the said lease, and execute a counterpart thereof, and within four months to erect other buildings; and it was agreed that the lease should be granted *immediately after C. P. H. had obtained his lease of the premises under a certain agreement therein mentioned;* and should contain covenants; with a proviso that if *C. H.* neglected to pay the rent therein mentioned, or to perform any of the stipulations, then the agreement, so far as related to the engagements of *C. P. H.* should

(*o*) *Phillips* v. *Hartley*, 3 C. & P. 121. (*p*) 7 Bing. 451.

be void; and that he should immediately enter on the premises thereby agreed to be let; and that in case *C. P. H.* neglected to perform his part he should forfeit 500*l.* On a question whether this amounted to a lease or not, the Court said, they could not hold that the parties intended to create a lease when they knew there was no power to do so, as appeared upon the face of the instrument (*q*).

In *Rawson* v. *Eiche* (*r*) the following was held not to be a lease:—"An agreement made the 28th April, 1815, between *B. H.* of the one part, and *C. E.* of the other part. The said *B. H.* agrees to make and execute unto the said *C. E.* a good and valid lease of all that, &c.; to hold to the said *C. E.* his executors and assigns for the term of seven years from the 24th June next, at the yearly rent of 105*l.*, clear of all taxes, &c., payable half-yearly; the first half-yearly payment to be made on the 25th day of December next; and it is hereby agreed that the lease shall contain a covenant to pay the rent, to keep the premises in repair, damage by fire excepted, for re-entry, &c. And *C. E.* agrees to accept such lease upon the terms and conditions aforesaid; and further, when the messuages on either side of the hereby agreed to be demised premises shall become tenanted, to pay to *B. H.* an additional rent of 15*l.* And *B. H.* agrees on or before the 24th June next to erect eight light panels in front of the drawing-room windows, &c., &c. And it is agreed that by the lease hereby agreed to be granted the rent therein reserved shall be 120*l.*; and that by a separate deed, to bear date the day next after the said indenture of lease, *B. H.* shall release to *C. E.* out of the said rent of 120*l.* the annual sum of 15*l.*; the said *C. E.* to prepare the lease at his own costs, to be approved of by the lessor's solicitor." *C. E.* entered and paid rent to *B. H.* The Court held it to be an agreement.

"*W. L. B.* in consideration of the rents, covenants, and agreements hereinafter mentioned, doth hereby agree to grant a lease unto *W. C. H.* his executors, &c., of all that piece of ground, &c.; to hold the same for the term of 2 years and 3 quarters, wanting 7 days, from the 25th December instant; yielding and paying yearly the rent of 140*l.*, payable quarterly; the first quarterly payment to be made on the 25th March, 1835. And which said indenture of lease shall contain covenants on the part

(*q*) *Hayward* v. *Haswell*, 6 Ad. & E. 265, 1 N. & P. 411.

(*r*) 7 A. & E. 451; 2 N. & P. 423; W. W. & D. 675.

of *W. C. H.* to pay the rent and all taxes, and to keep the fixtures, and deliver them up; and all such other similar covenants, charges, conditions, and agreements, as are contained in a certain indenture of lease dated 10th October, 1823, made between *J. M. G.* and *W. L. B.*, except, &c. And the said *W. C. H.* covenants and agrees to accept such lease, and execute a counterpart; and that until the lease shall have been granted it shall be lawful for the said *W. L. B.* to distrain for all or any part of the rent which may become due from the said *W. C. H.* for or in respect of the said messuage, &c., hereby agreed to be demised, at any time after the execution of this agreement." This was held not to be a lease, but an agreement; at the same time the case was admitted to be one of considerable doubt (*s*).

Any doubt that might at first exist on reading the case will, it is conceived, be removed by perusing the observations of the learned Judges, which, as embodying useful information, are here given in full. Lord *Abinger*, C. B., agreed to the principle, that if there be an agreement which clearly professes to transfer the possession to one party, and gives a power of distress for the rent to the other, it will, as a general rule, amount to a contract of demise; and if this agreement could receive no other construction they ought undoubtedly to hold it to be a demise; but he thought the stipulation upon which the question turned had not, necessarily, this effect; but that it might be consistent with applying it to a future lease. The contract was to grant a lease to commence on the 25th December, but as, by possibility, the parties might not be ready with the lease, and yet might desire that the premises should be occupied, it was provided that the landlord should have power of distraining for any quarter's occupation that might become due prior to the granting of the lease. *Parke*, B. was not free from doubt, but thought, upon the whole, they might, reasonably, construe the instrument to be an agreement; the general rule, his Lordship remarked, was, that if there were words showing a present intention that one was to give, and the other to have possession, a tenancy was created; the question was, whether there were sufficient words of positive agreement that the defendant should have possession, at all events; he thought it would be found on examination that there was nothing to bind the lessor in any event, unless a lease was executed; he thought the true construction was, that the lessor agreed to grant a future lease; and

(*s*) *Bicknell* v. *Hood*, 5 M. & W. 104.

the lessee, that if he was permitted to occupy before the lease was granted, and did occupy, the lessor should have power to distrain. But for such a stipulation, the lessor might not have been enabled to distrain, until some rent had been paid, without a fresh agreement to show that the terms of the tenancy were settled; the stipulation gave a power of distraining, although the lessor would not be compellable to allow the party to enter. *Maule*, B., observed, that there would be no doubt, if it were not for the clause of distress; but if the intention of the whole instrument were, that it should operate as a present demise that clause would be idle, because the lessor would have power to distrain without it; he thought that this very clause confirmed the view taken by the Court.

On a careful perusal of the agreement it will be perceived, that it is studiously prepared so as to be executory throughout; it commences by agreeing, not to let, but to grant a lease, and every act to be done has reference to the lease so to be granted; that which seems to have caused the doubt, *viz.*, the agreement to distrain, is, as Mr. Baron *Maule* observed, the strongest feature in the case, in favour of the Court's view of it; for it may be said to be inconsistent with an absolute lease, in which it is never, in fact, inserted, and it is perfectly consistent with the agreement to grant a lease. See also the same learned Judge's remark upon the point in the case of *Doe* v. *Foster*, *post*, page 432.

In *Chapman* v. *Towner* (*t*), the following was also decided to be an agreement and not a lease, *viz.*; "Agreement between *Mary Chapman* and *Wm. Towner*. *M. C.*, on behalf of herself and her sisters, agrees to let to *W. T.*, and the said *W. T.* agrees to take, a house, &c., from the 24th June next for 21 years, determinable at 7, or 14 years. The lease to be granted by *M. C.* and her sisters to contain a covenant on their part for *W. T.* to purchase the fee at any time within 7 years; and a covenant by *W. T.* to pay the rent of 35*l.* quarterly; and that the insurance is to be paid by *M. C.*, and repaid by *W. T.* as increased rent; to lay out within twelve months 100*l.*, and to keep in repair; and all other covenants usual in leases in Brighton; and that *W. T.* shall execute a counterpart when tendered to him; the expense of lease and counterpart to be paid by him." The Court said that there were words of present demise, but that the contract showed that they were used as words of agreement only; the amount of rent, periods of payment, and other terms were not mentioned, except as they were to be contained in a

(*t*) 6 M & W. 100.

lease to be prepared, and which was to be prepared absolutely, and not at the request of either party. Mr. Baron *Alderson* observed, that one mode of ascertaining whether an instrument was to be treated as a lease or an agreement was, that of looking to the inconvenience which would result from treating it as a lease. This lease was to contain all other covenants usual in leases in Brighton; the Court could not tell what they were; a difficulty arose from the omission to expand the terms of the holding upon the face of the instrument.

It may be further remarked, that it is apparent, from the style of the agreement, that a letting by means, only, of another instrument, was contemplated; the manner in which the mention of a lease is introduced seems to assume the granting of a lease, as a matter of course; and the circumstance of a stipulation for a counterpart, to be executed only if tendered, tends to favour this view.

So, likewise, in *Brashier* v. *Jackson* (*u*) the writing produced was determined, without any observation by the Court, to amount, only, to a contract for a future tenancy. By the writing in question, the defendant covenanted, promised, and agreed to make a good and sufficient lease by indenture, of certain premises to the plaintiff for the term of 21 years from Midsummer then next, at the yearly rent of 45*l.*, payable quarterly during the said term; to be entered upon immediately by the plaintiff, he paying to the defendant 25*l.* on the day of the date of the agreement. And that in the lease should be contained a covenant for payment of the rent and all taxes, &c., and to repair; not to assign, &c., and all other usual covenants for quiet enjoyment, &c., with power for either to determine the lease on notice; and the plaintiff covenanted to accept such lease and execute a counterpart.

In *Jones* v. *Reynolds* (*x*), which was an action for use and occupation, several letters between the parties were given in evidence, and the question was, whether or not they amounted to a lease; they were to the following effect:—"21 February, 1825. Dear Sir—I shall be happy to take a lease of your iron ore at Newton at, &c.; and I will engage to work the several veins of ironstone, limestone, &c., in such relative proportions as that the average produce of iron shall not exceed the usual average; the term to be 40 years from the 24th June next, and the sleeping rent 150*l. per annum.* The lease to be voidable on the part of the lessee by giving six months' notice, &c. *J. R.*" To which the following answer was

(*u*) 6 M & W. 549
(*x*) 1 A. & E. (N. S.) 506; 1 Gale & D 62.

returned: "I agree to the terms contained in your letter copied on the other side, and shall be ready to grant a lease conformable thereto from myself and all other proper parties whenever you require me. *C. R. J.*"

After these letters had passed a doubt arose whether they should comprehend the minerals in certain lands, and Mr. *R.* wrote to Mr. *J.* upon the subject; after which, the following memorandums were written, upon the letter of the 21st February. "Memorandum, 4th April. I propose to take a lease of the minerals above described, lying in the lands of which you are joint proprietor with Col. *K.*, on the terms above mentioned for your exclusive property. *J. R.*" "I agree to let Mr. *R.* a lease of my joint property on the same terms I have granted him a lease of my independent property, commencing at the same time, and paying the same sleeping rent, and the same royalty per ton. *C. R. J.*" The Court considered there was no doubt in the case; the instruments of proposal and agreement did not amount to a present demise; the matter was, altogether, *in futuro;* much remained to be done; the relative proportion of iron ores to be worked had to be ascertained by a competent person; and, till that was done, there could be no tenancy; the introductory word, referring to a future lease, would not reduce it to a mere agreement, but here the intention of a present demise was not shown.

In *Doe dem. Morgan* v. *Morgan and Powell* (*y*) an instrument was entered into which stated, that "*D.* agreed for himself, his administrators and executors, to let and grant a lease to *M. W. & W.* the coal, iron-mine, stone, and fire-clay under, &c., at the following rate per ton, *viz.*, 9*d.* per ton for coal, 1*s.* per ton for mine, and for clay and stone the same that *D.* is paid for, as well as for the coal and mine, for the term of 70 years from the 2nd February; and that so much royalties as will amount to 50*l.* a year be worked or paid for during the term; which rent is to commence in a year from the time a pit is sunk through the four-foot coal; with power to work the said minerals, and to deposit rubbish and make a wharf as is usually granted in leases of a similar nature, and by *D.*" Power was given to the lessees "on giving six months' notice, to abandon and quit the same as if this agreement had never been entered into; and we hereby bind ourselves to commence sinking a pit before the 24th June next; and the said *D.* engages that he has not incumbered the said estate to prevent him entering

(*y*) 14 L. J. R. (N. S.) C. P. 5; 8 Jurist, 1123; *nom. Doe* v. *Powell.*

into a lease on the above terms or agreement; which lease is to contain the usual covenants, and as is entered into by *D.*; the said *D.* to be allowed 1*d.* per ton for all minerals brought from other properties through the pits on the land; and the said *D.* engages to sign a lease upon the said terms as soon as it can be prepared." The Court held that this was not a present demise—1st. Although there were words of demise it was evident that a more formal instrument was contemplated. 2ndly. Immediate possession was not given or stipulated for. And 3rdly. There were strong circumstances of inconvenience, apparent on the face of the instrument, which would attend the holding of it to be a lease; which latter test was laid down in *Morgan* v. *Bissell* (*z*).

By a memorandum of agreement between *A.*, as agent for the churchwardens of *S.*, of the one part, and *B.* of the other part, it was agreed, (provided a licence should be obtained from the lord of the manor, and upon *B.* putting the premises into repair,) that the churchwardens should grant a lease of certain land and buildings to *B.*, for twenty-one years, from Midsummer then next, under the clear yearly rent of 30*l.*; such lease to contain the usual covenants, &c.; and *B.* agreed to accept such lease, and execute a counterpart, and that until such lease should be granted the said rent should be payable, and recoverable by distress, or otherwise, as if a lease and counterpart were executed. This was held to be properly stamped as an agreement; Mr. Justice *Maule* observing, as he did to the same effect in *Bicknell* v. *Hood*, *ante*, p. 428, that the latter words showed that the parties did not intend it to operate as a lease (*a*).

Agreement to grant a lease, with possession given, held to amount to an agreement not to give notice to quit.

In *Weakley dem. Yea* v. *Bucknell* (*b*), the lessor of the plaintiff by an agreement in writing articled to grant a lease to the defendant for 21 years from Lady-day, 1758, at the yearly rent of 220*l.*; under which agreement the defendant had been in possession 18 years, when the lessor of the plaintiff gave him notice to quit, and brought an ejectment; and the question (argued on a special case) was, whether the writing was an agreement, or a lease; if the former, it required no stamp (*c*), and might be given in evidence, but then it would be no bar to the action; if the latter, it could not be given in evidence for want of a stamp. Lord *Mansfield* would not hear counsel for the defendant in so plain a case. It

(*z*) 3 Taunt. 65.

(*a*) *Doe dem. Bailey* v. *Foster*, 3 M. G. & S. 215.

(*b*) Cowp. 473.

(*c*) Stamp duty was not imposed on agreements used as evidence, only, until afterwards.

was an agreement for a lease, but by it the lessor of the plaintiff had agreed, for valuable consideration, not to give notice to quit; if he had tendered a lease, and the defendant had refused to accept it, he might, perhaps, be let in to bring an ejectment.

Demise of a freehold interest not by deed, treated as an agreement.

A writing containing words of present demise of a freehold interest, but not operating as a lease because not by deed, will be construed as an agreement to grant a lease.

The following memorandum, stamped with 20*s.* as an agreement, was received in evidence:—"An agreement between *B. R.* and *G. R.*, that is to say; *G. R.* to have my tenement called D., situate, &c., for 20*l.* a year, and the whole of my keep and maintenance during the life of *G. R.*; and to take possession immediately, and begin to pay rent at Michaelmas," &c. The Court, on motion, held that it could not operate as a lease for the life of *G. R.*, not being a deed; but only as an agreement to grant a future lease for the life of *G. R.*, and was, therefore, properly received (*d*). This point seems scarcely to have been disputed; there were others in the cause.

Demise void not being by deed, good as an agreement for a lease.

So, it is presumed, an agreement, containing words of present demise, but inoperative, as a lease, by reason of its not being a deed, is to be treated as an agreement to grant a lease, and enforced, accordingly. This was, expressly, provided by the 7 & 8 Vict. c. 76; but such a provision was, probably, not thought necessary on the occasion of passing the substituted Act of the 8 & 9 Vict. c. 106.

THE QUESTION whether an instrument was a lease or an agreement depended, in the cases subsequently mentioned, on various circumstances.

Agreement to let, and to build a brewhouse, &c.

In *Staniforth* v. *Fox* (*e*), the following writing was produced, *viz.*: "An agreement between *George Fox* and *John Staniforth*. *George Fox* does this day agree to let Mr. *John Staniforth* the whole of his premises situate, &c., for the term of ten years; also he does further agree to build a brewhouse, and make a large cellar under the yard at his own expense, at the yearly rent of 35*l.*; and that the said *George Fox* does further agree to pay the ground rent, which is 4*l.* 0*s.* 3*d.* yearly; and the said *George Fox* has this day received from the said *John Staniforth* the sum of 4*l.* in earnest."

(*d*) *Stone* v. *Rogers*, 2 M. & W. 443. (*e*) 7 Bing. 590.

It was held to be a present demise, and distinguishable from *Dunk* v. *Hunter* (*f*), where the entry was to be at a future day, and to depend on the lessee's paying down 50*l.*

Agreement to take, signed by one party only.

Where the language is that of the tenant only, it is not a demise, unless signed by both parties.

Clayton v. *Burtenshaw* (*g*) was the case of an instrument, under seal, whereby several persons agreed with the executors of a deceased person to take and hire, for a relative, a house at a rent of 35*l. per annum,* paying all taxes; and also further agreed to take the stock in trade of grocery, &c., and such part of the furniture, &c., as they should think necessary, at a fair valuation, on the 11th Oct. next coming; and for the consideration and amount of such stock, &c., they agreed to pay 1000*l.* The deed was stamped with 30*s.*, as a lease, and it was contended that it was not a lease, and that if it was, it was something more than a lease, and required, at all events, a 35*s.* stamp.

The Court held that it was not a lease; there was no demise; the language was that of the defendants alone; it could not have been the intention of the parties that it should operate as a present demise; there was no term, either as to commencement or duration. See also *Marlow* v. *Thompson* and *Doe* v. *Wiggins*, page 39, *ante*. As to the deed in *Clayton* v. *Burtenshaw* being of a twofold nature and requiring stamps, accordingly, see page 343, *ante*.

Where signed by both parties.

But where the instrument was signed by both parties, notwithstanding the language was all on one side, *Best*, L. C. J., held it to be a lease (*h*). The writing was as follows, *viz.*: "*Peter Trezevant* agrees to pay *F. Wright* the sum of 140*l. per annum,* (in quarterly payments,) for the house, &c., situate, &c., for the term of 7, 14, or 21 years, at his option at the end of every seven years; the rent to commence the 1st January, 1827. *F. W.*—*P. T.*"

The learned Judge said, the principle has been truly stated to be, what is the intention of the parties, as expressed in the instrument? Here are found all the requisites as to parties, commencement and expiration of term, description of premises, and rent, with the periods of payment; he thought the parties intended it to be a lease; the landlord, by agreeing to accept rent, consents to demise; no particular form of words was necessary. See also the observations of Mr. Baron *Alderson* in the next-mentioned case.

(*f*) Page 425, *ante*.
(*g*) 5 B. & C. 41.
(*h*) *Wright* v. *Trezevant*, Moo. & Mal. 231; 3 C. & P. 441.

Where the language of the agreement was that of the tenant, and it was signed by both parties, it was held not to be a lease by reason of the uncertainty as to the terms.

An agreement dated 31st of January, 1840, was made between *Rob. Barker*, as agent to the landlords, of the one part, and *Thos. Jones* of the other part, by which *T. J.* agreed to become tenant of Glynn Farm at the customary time of entry, under the following conditions, *viz.*: the sum of 260*l.* annual rent, to be paid at the usual time for the house, premises, and land, as agreed for. Mr. *R. B.* to lay out in improvements and alterations of the farmhouse, and new sheds, agreeably to plan and estimate produced, 200*l.*; with the understanding that spars for rafters for the out-buildings be found from the estate; cartage of all materials, except stone for walls, to be done or found by Mr. *Jones*. The instrument was stamped as an agreement, and it was held to be sufficient. It was not a demise, but evidence of some parol agreement containing the stipulations; there was no commencement or duration of tenancy specified.

Mr. Baron *Alderson* observed, that "where, by an agreement of this sort, one person agrees to take premises, and both parties sign the paper, looking at the whole of such an instrument together, nobody can doubt, that though it contain no words of demise by the party who signs it as landlord, such an instrument would amount to a lease, because you cannot give effect to the signature, unless by supposing that there is an implied agreement to demise, besides the express words by which the tenant agrees to take" (*i*).

Entry in landlord's book, but not signed.

A memorandum—"Agreed with *T. S.* to have the house in *P.* now occupied by *W.*, at 11*l. per annum*, to be paid quarterly," entered in a book kept by the landlord and signed by the wife of *T. S.* the tenant, but not signed by the landlord, whose name did not appear in any part of the entry, was held, in an appeal case, to be neither an agreement nor a lease (*k*).

Acknowledgment of a tenancy.

The following paper was stamped with 20*s.* as an agreement, *viz.*:—"I, *W. E.*, do hereby acknowledge, that I am indebted to Mr. *T. W. B.*, as agent of *I. S.*, my landlord, in the sum of 22*l.* for arrears of rent for the cottage now in my occupation; and I do now pay to the said *T. W. B.* the sum of 5*s.* on account, and in part of such rent, and do hereby undertake to pay to the said *T. W. B.* the sum of 8*l. per annum*, for the said cottage and pre-

(*i*) *Gore* v. *Lloyd*, 12 M. & W. 463; 13 L. J. R. (N. S.) Exch. 366.

(*k*) *Rex* v. *St. Martin's, Leicester*, 2 A. & E. 210; 4 N. & M. 202.

mises, by quarterly payments, from Michaelmas last." It was held not to be a demise; it was merely an acknowledgment of a by-gone tenancy, which authorized a distress, and was properly stamped with an agreement stamp (*l*). The question was raised merely with reference to the stamp, which seems to have been quite unnecessary, since, whether it was an agreement or a lease the stamp was the same.

Covenant for quiet enjoyment, a demise.

In the case of *Doe dem. Pritchard and others* v. *Dodd* (*m*), the Court said that the covenant for quiet enjoyment itself, contained in a deed demising certain premises, operated as a lease. In that case it was doubtful for whose life the lease was granted, but the grantors covenanted for quiet enjoyment during the life of one of them. No doubt, the covenant might be referred to, as explaining what was doubtful in the operative part of the deed, by pointing out the *cestui que vie;* there can be no question, however, as to the meaning of the expression of the Court with regard to the operation of the covenant itself.

Agreement between landlord, tenant, and intended sub-tenant.

A contract was made between the present tenant of a house, the landlord, and an intended sub-tenant, who agreed to take the house till a certain day, when the landlord was to release the original tenant on payment of his rent, and from which day the sub-tenant agreed to hold of the landlord, at a certain rent, and to give six months' notice previously to giving up possession. This was determined to be a lease, as to all parties (*n*).

Matters to be done.

Where matters are to be done before the tenancy can commence the agreement to demise is executory.

Valuation to be made and security to be given before commencement of tenancy.

In *John* v. *Jenkins* (*o*), the plaintiff had been tenant to the defendant, and pending such tenancy, an agreement was made in the following terms, *viz.*:—"An agreement made between *Esau Jenkins* and *David Jones*, about letting *Neuadd* farm from year to year. He the said *Esau Jenkins* lets this farm to *David Jones*, at the valuation of two disinterested persons. *David Jones*, when leaving the farm, is to leave the crop at a valuation, &c., &c. *David Jones* is to give two sureties for the rent." The Court held that, notwithstanding the words of present demise, the instrument was not a lease; there was to be a valuation to fix the rent, which never had been done; and the plaintiff was to give sureties; showing that it was not intended to operate until these things had been done, and which had not been done.

(*l*) *Eagleton* v. *Gutteridge*, 11 M. & W. 465; 2 Dowl. & R. 1053.
(*m*) 2 N. & M. 838.
(*n*) *Tarte* v. *Darby*, 15 L. J. R. (N. S.) Exch. 326; 15 M. & W. 601.
(*o*) 1 Cro. & M. 227; 3 Tyr. 170.

Repairs to be done.

In *Doe dem. Wood* v. *Clark* (*p*), the following paper was signed by the defendant and the agent of the landlords, containing proposals for letting two farms for twelve years, at definite rents, and on specified terms; concluding thus:—

"Agreed to the above rent, provided the house, cottages, and buildings are put into good, tenantable repair, on a plan to be mutually determined upon, and finally settled within one month from the above date. Witness our hands the day and year aforesaid." This was considered not to be a lease. It could not be said when the tenancy was to commence, which could not be until the repairs were done.

Agreement to pay additional rent, not a lease.

An agreement to pay additional rent on money expended is not a lease.

In *Hoby* v. *Roebuck and Palmer* (*q*), the plaintiff granted a lease for 21 years to *Roebuck*, who took *Palmer* into partnership; they agreed to pay an additional sum of 10*l. per cent. per annum*, on money to be laid out by the plaintiff in enlarging the premises. It was contended, for *Palmer*, that this was a new lease, but the Court held it to be but a collateral agreement.

Licence to dig for ores, not a lease.

The owner of the soil by indenture granted to *J. A. H.* and his partners, free liberty, licence, power, and authority, to dig, work, mine, and search for tin ore throughout all that part of the lands called, &c.; and the tin to raise, &c., and dispose of; and to dig and make adits, shafts, &c., as may be necessary; together with the use of all water, water-courses, &c.; saving to the owner the power of driving adits from any adit made, or to be made within the lands, to any other lands, &c. This was held to be a licence only, and not a demise (*r*).

Licence to dredge oysters.

A licence by the corporation of Colchester to dredge and take oysters within certain rivers, &c., for the season, &c., was considered not to be a demise (*s*).

(*p*) 14 L. J. R. (N. S.) Q. B. 233; 7 A. & E. (N. S.) 211.

(*q*) 2 Marsh. 433.

(*r*) *Doe dem. Hanley* v. *Wood*, 2 B. & Ald. 724.

(*s*) *The Mayor, &c. of Colchester* v. *Brooke*, 7 A. & E. (N. S.) 339.

Sufficiency of stamp.

THE following cases relate chiefly to questions as to the sufficiency of the stamp duty on the instruments produced.

Covenant by a third party to pay rent; or a sum in gross.

The circumstance of a third party joining in the lease, as a surety, covenanting for the payment of the rent, does not render an additional stamp necessary; the covenant is accessory to the lease, and is partly the consideration for granting it (*t*). But a covenant or undertaking by a third person for payment of a sum in gross will require a further stamp (*u*).

An instrument effecting two objects cannot be used for either, unless sufficiently stamped for both.

Lease and contract for sale.

A writing, being a present demise of a house, and also a contract for the sale of fixtures, but stamped only as an agreement, was offered in evidence in an action for the price of the fixtures, but was rejected for want of being stamped as a lease (*v*). The question, whether an instrument, for effecting two objects, is chargeable with a separate stamp duty for each, was not fairly raised, and, therefore, cannot be said to have been decided in this case; it would have been so, if the paper had been sufficiently stamped for the demise. There can be no doubt that an instrument is chargeable with duty in respect of the leading matter to which it relates. See the cases and observations relating to this subject under the head "INSTRUMENTS" (*x*).

A demise of one of several houses, with an agreement, on the part of the lessor, to assign his interest in the whole of the houses to the tenant, within seven years, at a certain sum, was considered, in *Lovelock* v. *Franklin* (*y*), as requiring an agreement, as well as a lease stamp. But, in a subsequent case, an agreement, contained in a lease, that the lessee should have the right of purchasing the demised property, only, for a definite sum, at any time during, or at the expiration of the term, was treated as a part of the consideration for the rent, and as not rendering a separate stamp necessary (*z*).

Lease of house, and also of furniture and fixtures at distinct rents.

A lease of a house and some land at 370*l.* a year, and of furniture and fixtures at 50*l.* a year, of which latter sum a separate reservation was made, was stamped with 3*l.*, as for a rent above

(*t*) *Price* v. *Thomas*, 2 B & Ad. 218.
(*u*) *Warton* v. *Walton*, page 339, *ante*.
(*v*) *Corder* v. *Drakeford*, 3 Taunt. 382.
(*x*) Page 337, *ante*.
(*y*) *Ante*, page 344.
(*z*) *Worthington* v. *Warrington*, *ante*, page 344.

200*l.* and under 400*l.*; and it was contended that the rent for the furniture and fixtures being merely accessory no stamp was required for it; but the Court held the stamp to be insufficient.

Tindal, C. J., observed that the plaintiff was in this dilemma; the 50*l.* was either accessory or distinct; if accessory, it should have been calculated with the principal sum, and a 4*l.* stamp would then have been required; if distinct, it would fall within the description of a lease of any kind not otherwise charged; and should have had a separate stamp of 1*l.* 15*s.* (*a*). The remark of the Lord Chief Justice is no doubt perfectly correct. If any *ad valorem* duty was payable at all for the furniture and fixtures, of which there can scarcely be a doubt, it was certainly chargeable on the aggregate (*b*); but if no such *ad valorem* duty was payable, then the deed was, as regards the furniture, &c., if distinct and not accessory, referrible to the head "Lease of any kind not otherwise charged."

The case of *Parry* v. *Deere* (*c*) may, at first, appear not to be quite consistent with the foregoing.

Lease of lands at certain rents and of others at rents not mentioned.

An agreement was made to let certain lands, at a rent of 200*l.* for the first ten years, and at 210*l.* for the remainder of the term; and, also, certain other lands, at the same rent then paid by other persons for the same, (not therein specified, but proved to have been certain sums, respectively); this agreement was stamped with 3*l.*, sufficient to cover all the rents; but it was contended, that, in respect of the demise at rents not stated, there should have been an additional stamp of 1*l.* 15*s.* as for a lease not otherwise charged, the Court, however, held the stamp to be sufficient.

There is, really, no inconsistency in this decision, either with any other case, or with any positive enactment. It will be observed that the duty, in the instance of a lease, is imposed, not with reference to the rent *expressed* in it, but upon the amount payable; and there is no provision which requires the rent to be stated; and, having regard to the loose kind of writings which the Courts have felt obliged to give effect to, as instruments of demise, the propriety of any such provision would have been doubtful; at the same time it might be questionable, whether the general policy of the Stamp Laws, that the duty on any instrument shall be chargeable by reference, *only*, to its contents, was intended to be departed from in this instance. In the case of a conveyance upon sale,

(*a*) *Coster* v *Cowling*, 7 Bing. 456.
(*b*) See *Boase* v *Jackson*, page 441, *post*
(*c*) 5 Ad. & E. 551; 2 H. & W 395.

where the relation of buyer and seller may be said to be terminated by the deed, it is required that the purchase-money shall be truly *expressed;* and the duty is made to depend on the amount stated; but in the case of a lease, which only commences a relation between the parties, it was, probably, thought unnecessary to make any such provision, conceiving that the parties, themselves, would, for their own sakes, take care to specify the terms upon which such relation was to subsist. The same may, also, be said with regard to mortgages and bonds. Assuming the suggestion here made to be well founded, then, a lease, in which the rent is not stated, will be liable as a lease not otherwise charged (*d*).

Additional sum paid for insurance.

Premises were let, by an instrument operating as a lease, at a rent of 50*l.*, and in which was a stipulation that the landlord should insure for 1000*l.*, and that the premium should be added to the rent, and become due and payable in like manner; and that, in case of fire, the sum recovered should be applied in rebuilding. It was stamped with 30*s.*, as for a rent exceeding 20*l.*, and not exceeding 100*l.* It was contended that as the instrument amounted to a lease, and the rent was uncertain, it did not fall within any description given under the head "LEASE" in the Stamp Act, and was, therefore, a deed not otherwise charged (*e*), and required a stamp of 35*s.* In support of the instrument it was insisted that the stamp was right, that if it were otherwise, then, if the rent was 500*l.* with a similar stipulation, the duty would be only 35*s.* instead of 4*l.*; in reply to which it was observed, that it was a positive agreement to pay a certain rent, with an uncertain condition appended to it.

The Court said that it did not appear that the stamp was not sufficient, that it lay on the party taking the objection to show that the premium with the rent might exceed 100*l.* (*f*). Whether the sum to be paid for insurance was rent reserved, is not, perhaps, quite clear; the stipulation, that it should be added to the rent, was, merely, for the purpose of enabling the lessor to recover, by summary means, the money paid by him for insurance, instead of inserting a covenant on the part of the tenant to insure. If a certain amount of rent be reserved in a lease, there can be no doubt that *ad valorem* duty is chargeable upon it, although something else, which is indefinite, may be made payable, in the shape

(*d*) See further remarks upon this case of *Parry* v. *Deere*, page 351, *ante*.

(*e*) Perhaps a "*Lease not otherwise charged*;" it does not appear to have been a deed; the stamp is the same.

(*f*) *Wilson* v. *Smith*, 12 M. & W. 401; 13 L. J R. (N. S.) Exch. 113.

of rent, or otherwise; the argument before alluded to upon this point is conclusive. Whether, in respect of any further indefinite rent for the same property, an additional stamp is requisite must depend, it seems, upon the actual amount; but, for any collateral matter a further duty would, of course, be chargeable. See *Clayton* v. *Burtenshaw* (*g*).

Lease of lands and incorporeal hereditaments.

A demise was made of certain lands, and also, of certain incorporeal hereditaments, reserving 75*l.* a year for the whole, of which 13*l.* 2*s.* 6*d.* was the value of the land. It was stamped with 30*s.*; but it was contended that it was void, altogether, the same not being by deed; and therefore, incapable of passing the incorporeal hereditaments; and that it should have been stamped with 35*s.* as a lease not otherwise charged. But the Court said it was, at all events, good in law for the lands, and that the stamp was sufficient, being applicable to a lease at a rent of less than 100*l.* (*h*). An instrument is chargeable with stamp duty, as elsewhere observed (*i*), according to its tenor. In this case, the writing purported to be a demise of certain property, at an annual rent of 75*l.*; it was, therefore, chargeable with stamp duty on that amount of rent, without reference to the circumstance of its failing, in point of law, as to part (*k*): and, most assuredly, that circumstance could not render the instrument liable to a higher duty than would have been payable, if it had effectuated the full intention of the parties.

Several reservations of different rents.

Where there are two distinct reddendums, for different properties, for terms commencing at different periods, granted by and to the same parties respectively, in the same instrument, one *ad valorem* duty on the aggregate amount of rent is sufficient, the whole being one transaction, and there being no fraud. A slate pit, and certain stone quarries were demised for 14 years; the former from the 25th March, 1815, at 70*l.* *per annum*; the latter from the 29th Sept. 1817, at 130*l.* *per annum*; the lease was stamped for the amount of the two sums, instead of for each separately, and it was held to be sufficient (*l*).

Distinct demises and reservations, &c.

The same was held in *Blount* v. *Pearman* (*m*), where a lease contained a demise of two separate farms, with two habendums

(*g*) Page 343, *ante*.

(*h*) *Reg.* v. *Hockworthy*, 7 Ad. & E. 492; 2 N. & P. 383; W. W. & D. 707.

(*i*) Page 7, *ante*.

(*k*) See *Doe* v. *Stagg*, "SURRENDER," and page 8, *ante*.

(*l*) *Boase* v. *Jackson*, 3 B. & B. 185.

(*m*) 1 Bing. (N. C.) 408. See also, Lessee of *Kennedy* v. *Hayes*, 2 Ir. Law Rep. 186; and Lessee of *Stewart* v. *Sisson*, Hayes, 512.

differing from each other in duration, a reservation of two distinct rents, one in respect of each farm, and separate covenants, some applying to one farm and some to the other. The Court considered that this was, as the parties meant it to be, virtually and substantially, one transaction, and that one *ad valorem* stamp was sufficient.

Re-demise in a mortgage.

A re-demise, contained in a mortgage deed, for better securing the payment of the accruing interest, would seem not to render a lease stamp necessary (*n*).

Sale of herbage.

An instrument for the sale of herbage is chargeable with *ad valorem* duty under the head "Conveyance."

At a sale by auction in April, 1835, the defendant bought, for 45*l.*, a lot described in the catalogue as "Herbage of Upper Townsend's Close," &c. under conditions that the highest bidder should be entitled to possession, and should pay down a percentage, and give a note for the remainder; to keep possession till the 29th September. The defendant signed the conditions of sale, which were stamped with 20*s.*; but it was contended that the stamp should have been 35*s.* as for a lease not otherwise charged. The Court, however, held that the writing was chargeable under the head Conveyance, where the word "lease" was mentioned; and that the stamp was sufficient (*o*). It is evident that the money to be paid, in this instance, was, properly, purchase-money, and not rent for the occupation of the land; upon which distinction the decision does not admit of a question. See, also, page 219, *ante*.

Lease with a covenant by the tenant to lay out money in building.

A covenant, on the part of the tenant, to lay out money in building, does not render an *ad valorem* duty payable on the amount so to be expended.

In *Nicholls* v. *Cross* (*p*) a lease, stamped with 20*s.*, whereby a piece of land was demised for 99 years, determinable on the life of the lessee, at a rent of 8*l.*, and containing a covenant, on the part of the lessee, to build a dwelling-house on the land, and expend 150*l.*, at least, upon it, was objected to as requiring a 35*s.* stamp; but the learned Judge, *Tindal*, C. J., overruled the objection, and a verdict being returned for the plaintiff, the Court of Exchequer refused a new trial. There is an error in the report of the argument, counsel being made to contend that whether the deed was chargeable as a conveyance on sale for 150*l.*, or as a lease, not

(*n*) *Walker* v *Giles*, 13 Jur. 589.
(*o*) *Cattle* v. *Gamble*, 5 Bing N. C. 46; 7 Dow 98; 1 Arn. 405.
(*p*) 13 L. J. R. (N. S.) Exch. 244.

otherwise charged, the stamp should have been 1*l.* 15*s.*; this is not so, the *ad valorem* duty under the head Conveyance would have been 2*l.* The opinion of the Court confirms the view entertained at the Stamp Office.

Lease not exceeding three years.

It is a common idea, that, because a parol lease, for a term not exceeding three years, is good within the Statute of Frauds, a lease, in writing, for the same period, is not liable to Stamp Duty; it is scarcely necessary to attempt to show, so far, at least, as the profession is concerned, that this is erroneous; but see *Prosser* v. *Phillips* (*q*). See, also, page 415, *ante*, as to such leases not being within the 8 & 9 Vict. c. 106, requiring leases to be by deed.

As to leases for less than a year:—

Lease for less than a year.

The case of *Atherstone* v. *Bostick* (*r*) there would, scarcely, be any occasion to notice but for the observation of the Lord Chief Justice, upon which some remark is necessary. That was an action for the rent of certain apartments for a portion of a year, and on the trial the plaintiff produced a letter dated 25th Feb., written to him by the defendant, agreeing to accept terms, previously proposed, for occupying the rooms from March to September, and to pay for such period 50 guineas; and also agreeing to occupy them for the next three months, furnished, on the same terms, *viz.*: 25 guineas, or unfurnished at the rate of 80 guineas *per annum*. The letter was stamped with 30*s.* A letter from the plaintiff, of the same date, offered by the defendant with the view of showing a different contract, was rejected for want of a stamp. On arguing a rule for a new trial the Court held that it was properly rejected; the Lord Chief Justice observing, that the contract was complete by the first letter, which was sufficiently stamped whether considered as a lease or agreement; that if the other letter formed part of the contract, one of them should have been stamped with 35*s.*; if it formed a distinct agreement, it should have been a separate stamp.

In this case, no objection seems to have been made, at the trial, to the admission of the letter given in evidence by the plaintiff, as to stamp duty, or otherwise; no discussion, therefore, on arguing the rule, could, properly, be allowed, upon the subject, and any opinion thereon was beside the question; consequently, the remark of the Lord Chief Justice that it was sufficiently stamped whether considered as a lease or an agreement, will have

(*q*) Bull. N. P. 269.
(*r*) 2 M. & G. 511; 2 Scott, N. R. 637.

less weight than if it had been delivered on a question at issue; the writer has, therefore, less hesitation in stating a different opinion, which he does, however, with much deference and respect. It does not appear why, if this letter could be considered as a lease, the duty of 30*s*. should attach; that duty is *ad valorem*, and the *ad valorem* duties on leases are charged on *yearly* rents reserved. The rent in the present instance was 52*l*. 10*s*., for the half-year, and for a further quarter, 26*l*. 5*s* ; being at the rate of 105*l*. for the year; for which amount of yearly rent 2*l*. is the proper stamp; but it cannot be said that the rent to be paid for a portion of a year's occupation is, itself, a yearly rent; nor, it is conceived, can such portion be taken as the average of a whole year, so as to admit of the duty being assessed as upon a yearly rent; it seems clear, therefore, and so it is always considered at the Stamp Office, that a lease, for any term less than a year, comes within the description of a "Lease of any kind not otherwise charged," and is liable to the duty of 35*s*.; and that the duty on the letter in question, if a lease, could not, in any view, be 30*s*. As to the point whether a stamp of 35*s* was requisite on the rejected letter if it formed part of the same contract, see page 43, *ante*.

This view is favoured by the case of *Burton* v. *Reevel* (*s*), in which it was held, that an agreement to let a shop, &c. from a certain day, for the monthly rent of 1*l* 16*s*, to be paid every four weeks, would, but for the 7 & 8 Vict. c. 76, which was in force when the instrument was made, have been liable to stamp duty as a lease not otherwise charged.

Consideration to intermediate party.

Building leases.

A lease granted to a third person, at the request, or on the nomination of an intermediate party having a contract with the lessor for a lease, and having sold his interest therein to such third person, is a conveyance upon sale, in which the money paid by the latter, for the interest of the intermediate party, must be inserted, and by the omission to state which all parties incur penalties; the vendor is liable to be called upon to refund the purchase-money, and the attorney concerned in preparing the lease is disabled, by conviction, to practise. See, *ante*, page 228.

Premium omitted.

The omission to state truly the consideration does not invalidate the lease. In *Duck* v. *Braddyll* (*t*), a sum of money which was undoubtedly premium, was reserved as for rent for the first year and part of the second, the *ad valorem* lease duty being paid in-

(*s*) 11 Jur. 71; 16 L. J R. (N. S.) Exch. 85; 16 M. & W. 307.
(*t*) 13 Price, 455; M'Clel. 217.

stead of that on a conveyance upon sale; it was objected that the deed was void, but it was held otherwise; the remedy consisting in the shape of penalty. So, also, in the case of *Doe dem. Higginbotham* v. *Hobson* (*u*), where the question was, whether a sum was paid for the lease or the good-will. See "CONVEYANCE *on Sale*," page 227.

The lessor is not bound to execute a lease in which the consideration is stated to be paid for the lease instead of the fixtures.

Misstatement of consideration an objection to executing a lease.

In *Vonhollen* v. *Knowles* (*x*), an agreement was entered into between the plaintiff and defendant, whereby the latter agreed to sell, and the plaintiff to purchase the house and shop fixtures specified in an inventory, for 150*l.*; the stock in trade to be taken at a valuation; 125*l.* to be paid on taking possession, the remainder by bills, &c.; and whereby the defendant agreed to grant, and the plaintiff to take a lease of the messuage for 21 years, at a rent of 60*l.* *per annum*. The plaintiff tendered to the defendant a lease for execution, which witnessed, that, as well for and in consideration of 150*l.* paid, as for the rent, covenants, &c., he the plaintiff hath demised, &c. The defendant objected to the lease, inasmuch as, by executing it, he should be acknowledging that the 150*l.* was paid for the lease, and not for the fixtures; so that, if the plaintiff were evicted by title paramount, and, afterwards, brought an action against the defendant, he would be entitled to recover from him the 150*l.*, and, also, to retain the fixtures, as the defendant would be estopped from proving that the 150*l.* was for the fixtures.

The Court held that the defendant was not bound to execute a lease so prepared.

An unstamped agreement annexed may be read as part of the instrument; but not an unstamped former lease which is referred to.

In *Pearce* v. *Cheslyn* (*y*), in order to prove a tenancy, two papers annexed to each other were put in; the first, which was dated 29th January, 1833, and entitled, "Memorandum of an agreement between *Richard Cheslyn* (the defendant) and *John Webberly*," in effect, amounted to a lease; the other, dated 16th March, 1833, after reciting that the within named parties had agreed to abandon the *annexed* contract, proceeded thus: "We, *W. Pearce* and the said *Richard Cheslyn* do agree, the former to take, and become tenant, and the latter to let the therein farm upon the conditions

(*u*) 3 D. & R. 186.
(*x*) 13 L. J. R. (N. S.) Exch. 140.
(*y*) 4 Ad. & E. 225; 5 N. & M. 652; 1 H. & W. 768.

and agreements contained in the same, &c. And we further bind ourselves to execute a similar agreement to the one recited and referred to." This last writing had on it a lease stamp of 3*l.*; the former had no stamp; it was, therefore, objected that it could not be read; but the Court was of opinion that the second instrument incorporated the first, which might be read, though not stamped; and that it thereby constituted a perfect lease, on the terms of the earlier agreement.

But where a parol agreement was made to let lands upon the terms of a former lease, such lease, not being duly stamped as an original instrument, was not allowed to be read (*z*).

An under-lease declared upon as an assignment.

An under-lease was declared upon in *Baker* v. *Gostling*, as an assignment, and issue taken upon the allegation; at the trial the counterpart, duly stamped as such with 1*l.* 10*s.*, was offered in evidence, but rejected, because it was not stamped as an assignment, although it was not an assignment, and therefore not liable to duty as one. See the case and the observations upon it, under the head "INSTRUMENTS" (*a*).

Exemption under 37 Geo. III. c. 111.

In ejectment (*b*) for the recovery of several houses, to prove a demise of the ground on which they were built, at a rent of 3*l.* *per annum*, an unstamped agreement was produced, and it was contended that it was not liable to the duty, as being a demise of land under 5*l.* *per annum*, within the exemption contained in the 37 Geo. III. c. 111, s. 3 (*c*); but it was held that this was a beneficial interest, and not within the exception, and that the agreement required a stamp. Under the present Act no such question can arise, the exemption in the case of a lease extending only to a demise of waste or uncultivated lands of very small value to poor persons; but the decision may afford an interpretation of the exemption, under the head "AGREEMENT," of a memorandum for granting a lease at rack rent of a messuage, &c., under the yearly rent of 5*l*

(*z*) *Turner* v. *Power*, 7 B. & C. 625. See more particularly as to these cases, page 355, *ante*. See also "PROGRESSIVE DUTIES."

(*a*) Page 384, *ante*.

(*b*) *Doe dem. Hunter* v. *Boulcot*, 2 Esp. 595.

(*c*) There is some error in the report of this case; the Act referred to exempts from the duty thereby imposed, "Leases of lands or tenements for terms not exceeding 21 years, the full improved annual value whereof, and rent reserved thereby shall not be more than 10*l.*," and also, "Leases for lives, or for years determinable on lives, where the fine shall not exceed 20*l.* and the rent 40*s.*"

As to the time for stamping leases in certain cases.

As to the time for getting an instrument stamped in the case of an application under the 1 Geo. IV. c. 87, in ejectment, for a rule calling on the tenant to show cause why he should not enter into a recognizance to pay costs, &c, see "INSTRUMENTS" (*d*).

(*d*) Page 292, *ante*.

Legacy Duty. See "PROBATE AND LEGACY DUTY."

Licence to sell Stamps.

3 & 4 Will. IV. c. 97.

Sect. 1.—Reciting, that the laws are insufficient to prevent the selling and uttering of forged stamps.

Licence to deal in stamps.

Bond to be given.

Not liable to stamp duty.

Licence may be revoked.

The Commissioners may grant a licence to any person they think fit (not being a distributor of stamps appointed by them, nor a sub-distributor appointed by any such distributor) to vend and deal in stamps at any place or places in Great Britain: such person to enter into a bond in 100*l.*, not to sell, or have in his possession, any stamp not procured at the head office in Westminster or Edinburgh, or from some distributor, or licensed person. Such bond not to be liable to stamp duty, and one licence and one bond only to be required for any copartnership. The Commissioners may revoke any such licence.

Particulars to be specified in licences.

Sect. 2.—The licence to specify the name and place of abode of the person to whom it is granted, and the houses or shops in which he is to vend stamps; such person not to deal in stamps at any other place.

No person to deal in stamps without such licence.

Sect. 3.—If any person other than as aforesaid sell or offer for sale, or exchange any stamped vellum, &c. without such licence, or at any place not specified in his licence, to forfeit twenty pounds; and if in any proceedings for recovery of such penalty, it appears that any stamp sold, was forged, the penalty to be doubled, and the special matter stated in such judgment; the jury to be required to say whether such stamp was forged, or not: Provided, not to exempt any person from any criminal prosecution for selling, &c., forged stamps.

Persons preparing deeds.

Sect. 4.—Persons employed to prepare, or engross instruments may charge for the stamp without having a licence.

Persons licensed to paint their names, &c., in front of their houses.

Sect. 5.—Licensed person to paint in Roman capitals on the outside of the front of the house at which he is licensed, his name at full length, with the words "licensed to sell stamps," and continue the same all the time he is licensed; and for any neglect to forfeit ten pounds; in case of copartnership the name of one only to be sufficient.

Unlicensed persons painting same.

Sect. 6.—If any unlicensed person paint, or suffer to continue, upon any part of his house, &c., such words, to forfeit ten pounds for every day.

Allowance for stamps in the possession of licensed vendors dying, &c.

Sect. 8.—If any licensed person die, or become bankrupt or insolvent, or if the licence expire or be revoked, the stamps in the possession of such person may within three calendar months be brought to the Commissioners, who may pay the amount of the duty thereon, deducting the usual per-centage; and also pay the value of the paper, &c.: Provided, that proof be made that such stamps were actually in the possession of the party, for the purpose of sale, and were procured by him at the head office, or from some such distributor or person licensed.

Sect. 9.—As to searching houses on suspicion of forgery, see "Forgery." And as to the recovery of penalties, see "Penalties."

Ireland.

See 55 Geo. III. c. 101; and 5 & 6 Vict. c. 82, s. 20.

Medicines.

23 Geo III c. 62.

25 Geo III c 79

By these Acts stamp duties were granted on certain medicines, and on licences for selling the same.

42 Geo. III. c. 56.

By this Act the duties granted by the latter Act were repealed and others granted in lieu, and all the provisions contained in both the said Acts were repealed, which new duties were repealed and re-granted by the 44 Geo III c. 98.

Duties to be paid by the owners of the drugs before exposed to sale, &c.

Sect 3 —The duties to be payable by the proprietors, or makers and compounders, or original and first vendors of the drugs, &c, therein aforesaid, and be charged upon and payable in respect of the same, and of every packet, &c, with any such contents as therein aforesaid, before the same shall be first sold by or delivered out of the possession of such proprietors, &c, for sale, either wholesale or retail, either for foreign or home consumption or otherwise, and before the same shall in any way be uttered or vended either for foreign or home consumption, or exposed to sale, or offered or kept ready for sale, and not in bulk, in any shop, &c, by any such proprietor, &c, aforesaid, or any person on his behalf

Sects 4 and 5 —Not to extend to the articles specified in these clauses.

Vendors to take out an annual licence.

Sect 6 —Every owner, proprietor, maker, and compounder of, and every person in Great Britain, uttering, &c, any such drugs, &c, to be used or applied externally or internally as medicines or medicaments, for the prevention, cure, or relief of any disorder or complaint incident to or in anywise affecting the human body, or any packets, boxes, bottles, pots, phials, or other inclosures aforesaid, with any such contents as aforesaid, subject to the said duties, annually to take out a licence charged with a certain stamp duty

Sect 7 —The duties to be under the Commissioners of Stamps

Termination of licences.

Sect 8 —The Commissioners to grant such licences, the same to continue in force until the first day of September in each year, to commence from the day of the date

Selling medicines without a licence.

Sect 9 —No person in any manner to receive any profit, advantage, or emolument, as the owner or proprietor of, or make or compound, or utter, vend or expose to sale, or keep ready for sale, any drugs, &c., aforesaid, or any packets, boxes, bottles, pots, phials, or other inclosures aforesaid, with any such contents as aforesaid, subject to the duties, unless he shall have obtained a licence, upon pain to forfeit 20*l*

Vendors, &c, to apply for labels.

Sect 10 —Every person making, vending, &c., any such drugs, &c, to apply to the Commissioners for paper covers, wrappers, or labels, to be affixed to the packets, &c, and deliver a note in writing containing his name and place of abode, and the place where the drug, &c, in respect whereof such application is made, is first sold.

Labels to be stamped, and affixed to the medicines

Sect 11 —The Commissioners to impress on the said covers, &c , some mark, device, or some particular words to denote the duties, and deliver to every such licensed proprietor, &c , sufficient covers for the purpose aforesaid, on payment for the stamps , and all packets, &c , with any such contents, as soon as the same are ready for sale, to have well and sufficiently affixed thereto, such covers, in such manner as the Commissioners shall direct , who are from time to time to direct the manner in which such covers, &c , are to be affixed to the articles, or to the papers, thread, or other thing inclosing, or which shall be directed by the said Commissioners to inclose the same, and to make such rules and regulations in that behalf as they shall think necessary to prevent any such covers from being made use of again , such rules, regulations, and directions, to be delivered to every proprietor, &c , at the time of taking out his first licence, and so from time to time with every future licence, if any variation or alteration shall have been made

Selling without labels

Sect 12 —No person to vend, &c , any packet, &c , without a cover affixed to the same, as the Commissioners shall direct, under pain of forfeiting 10*l* See 52 Geo III c 150, s 2, in lieu of this clause

Taking off or using labels a second time

Sect 13 —If any person fraudulently take off any stamp in respect whereof or whereby any duties are payable or denoted on any packet &c , containing any drug, &c , subject to the duties hereby imposed after the same shall have been sold or disposed of, or fraudulently affix to any such packet, &c , any label so stamped, the same having once been made use of for the purpose aforesaid, or shall utter, vend, or expose to sale any packet &c , containing any drug, &c , aforesaid, with such label so taken off and affixed thereto, to forfeit 20*l*

Selling or buying such labels

Sect 14 —If any person sell or buy any such label, before made use of, in order to be again made use of, or sell any packet, &c , with such label, before made use of, affixed thereto, to forfeit 20*l*

Buyer or seller informing

Sect 15 — If either the buyer or seller inform against the other party, he is to be admitted to give evidence, and be indemnified, and receive the same advantage as any other informer

Sect 16 —Allowances for prompt payment of duties —See " DISCOUNT "

Notice to be given to the Commissioners of the place of making or vending

Sect 17 —Every person who shall make, or keep ready for sale, or utter, &c , any such drugs &c , liable to the duties, before he obtains a licence, is to give notice in writing of the usual shop, &c , where he makes, &c , the same, or intends so to do , which notice is to be given to the Commissioners or to their officers next adjacent to such place , the like notice to be given on any change of place , upon pain for making default, or giving any false notice, to forfeit 10*l*

Allowance for spoiled labels

Sect 18 —Provided—In case any covers, &c , be spoiled, so as to be rendered unfit for use, any licensed person may bring the same, with the articles to which the same shall have been affixed, to the Commissioners , and on oath (or affirmation) to the satisfaction of the Commissioners, that such covers, &c , have not been used for any other purpose, or in any other manner whatsoever, and have not been fraudulently re bought or returned, after the same have been sold or disposed of, and that no money or other consideration hath been paid or given for the same, except the money first paid for the same at the Stamp Office , the Commissioners are required to deliver other covers, &c , instead of those damaged

Schedule of medicines

Sect 19 —The duties to extend to all articles specified in the schedule annexed to the Act NOTE —Other schedules and descriptions have since been substituted.

Powers of former Acts.

Sect 21 —All provisions of former Acts relating to the stamp duties, to be of full force and effect with relation to the duties hereby imposed , and be applied for raising the same

Sect 22 —As to the application of penalties under this Act —See 44 Geo III c 98 ss 10 & 27 —See also " PENALTIES "

Where penalties to be sued for

Sect 23 —All pecuniary penalties for offences committed against this Act may be sued for and recovered in any of the Courts at Westminster, and in the Court of Sessions, Justiciary, or Exchequer in Scotland

Sect. 25 —Provided—That any Justice may hear and determine any offence against this Act, at any time within six months, and, upon information or complaint, may summon the party accused, and the witnesses, and, upon due proof by confession, or the oath of a witness, give judgment for the penalty, and levy the same on the goods of the offender, and cause sale to be made thereof if not redeemed within six days, and where goods cannot be found may commit such offender to prison, there to remain for the space of three months, unless such penalty be sooner paid. Upon giving security to the amount of such penalty, and such costs as may be awarded, the party may appeal to the next General Quarter Sessions; and in case the judgment shall be affirmed, such Justices at Sessions may award costs as to them shall seem meet.

Penalties may be recovered before Justices.

Appeal.

Sect. 26.—If any person summoned as a witness neglect to appear, without a reasonable excuse, to forfeit 40*s*

Penalty on witnesses neglecting to attend.

Sect. 27.—The conviction to be in the form set forth in this clause.

Sect 28 —The Justice may mitigate any such penalties as he shall think fit, reasonable costs and charges of the officers and informers, as well in making the discovery as in prosecuting the same being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalties to less than one moiety over and above the costs, no conviction to be removed by certiorari. —See 43 Geo. III c 73, s. 5

Penalties may be mitigated.

Sect. 30.—Any person sued for anything done in pursuance of this Act may plead the general issue, and give the special matter in evidence, &c

General issue.

43 Geo. III. c. 73.

Sect. 1.—The schedule to the last-mentioned Act annexed, and so much of the said Act as relates thereto, repealed; and the schedule annexed to this Act substituted in lieu.

This schedule was again repealed by the 44 Geo III. c. 98, and another substituted.

Sect. 2.—If any person who shall receive from any proprietor, &c., or his agent, any article subject to duty, for the purpose of selling the same again, without the label, denoting the proper duty affixed thereto, and shall not within ten days return the same, or give information thereof to the Commissioners and deposit such article with the nearest distributor of stamps, he shall forfeit 20*l*.

Penalty for receiving articles without labels, and not returning them or informing.

Sect. 3.—Upon the outside of all parcels, &c., in which shall be contained one dozen or more of packets, &c, containing any article in the said Acts mentioned, and subject to duty, sent by any proprietor, &c, or his agent, to any retail vendor, by any public conveyance or which shall be about to be exported, the word "Medicines" to be written; and also the name of such proprietor, &c, and of the person sending or exporting the same, if not such proprietor, &c, thereof; and any officers of the customs or excise, or any person appointed by the Commissioners of Stamps, by authority in writing, under the hand of any Justice of the peace, (which authority any Justice is required to grant,) on information given to him on oath that there is reason to suspect that any such parcel, &c., contains such articles subject to such duties, and not properly labelled, may open such parcels, &c.; and in case such labels are not affixed thereto, he may seize the same, and send or deliver the same to the said Commissioners, who are hereby authorized to reward the officer making any such seizure in such manner as to them shall seem fit.

On the outside of parcels containing twelve inclosures to be written, "Medicines," &c.

Officers may open suspected parcels.

Sect 4.—No person to commence any proceedings for the recovery of any penalty, incurred by virtue of the said Act, (42 Geo. III. c 56,) unless the same be commenced in the name of the Attorney-General, and by his authority, or in the name of some officer, or person appointed for that purpose by the Commissioners; and any proceedings commenced by, or in the name of any other person to be null and void

Proceedings to be in the name of the Attorney-General, &c.

And within three months.

Penalties may be mitigated.

Sect. 5.—All such proceedings to be commenced within three months, and not afterwards; and any Justice may mitigate the penalty, the reasonable costs and charges of the informer being always allowed (if demanded) over and above such mitigation, and so as such mitigation does not reduce such penalty to less than one fourth part thereof.

44 Geo. III. c. 98.

By this Act the foregoing duties were repealed, and others of the same description and value (with an accidental omission as to licences in Edinburgh, afterwards supplied), subject to the regulations, &c., of former Acts, granted instead; which duties are still payable. See TABLE "MEDICINES." See "DISCOUNT AND ALLOWANCES" for the discount on the purchase of medicine stamps now allowed, instead of that granted by this Act, page 252, *ante*.

A schedule of medicines chargeable with the new duties was also substituted for that annexed to the 43 Geo. III. c. 73; which was, again, superseded by the 52 Geo. III. c. 150.

52 Geo. III. c. 150.

A new schedule of medicines.

Sect. 1.—The schedule of drugs, &c., annexed to the last Act, and so much of the same Act as related thereto was by this Act repealed, and in lieu thereof it was enacted that the schedule annexed to this Act should be read with the said Act and be deemed and taken as part thereof, and that the duties by the said Act imposed should be deemed to extend to and attach upon the several drugs, &c., set forth in the schedule annexed by the respective names or descriptions therein specified, or by whatsoever other names, or descriptions, the same had been, then were, or thereafter should be called, known, or distinguished; and that all the powers, provisions, penalties, &c., contained in the said recited Act, and in the Act of the 42 Geo. III. c. 56, in any way relating to the articles, matters and things mentioned in the schedules thereunto respectively annexed should be of full force and effect, and be observed, applied, enforced, and put in execution with regard to the several articles, matters, and things mentioned in the schedule annexed to this Act.

Penalty on persons vending medicines without a paper cover provided by the Commissioners.

Sect. 2.—If any person, whether licensed or not, shall utter, vend, or expose to sale, or offer or keep ready for sale whether for foreign or home consumption, or buy, or receive, or keep for the purpose of selling by retail on his own account, or on the account or behalf of any other person, any packet, box, bottle, pot, phial, or other inclosure containing any of the drugs, &c., mentioned and set forth in the schedule annexed, without a paper cover, wrapper, or label, provided and supplied by the Commissioners of Stamps, pursuant to the said Act of the 44 Geo. III. or the 42 Geo. III., and duly stamped for denoting the duty charged on such packet, &c., being properly and sufficiently pasted, stuck, fastened, or affixed thereto, so and in such manner as that such packet, &c., cannot be opened and the contents poured out or taken therefrom without tearing such stamped cover, wrapper, or label, so as to prevent its being made use of again, then and in such case the person so offending shall forfeit ten pounds, to be recovered and applied as in the said Acts or either of them in relation to the duties on medicines.

Sect. 3.—Imposes a duty of 2*l.* on a licence for dealing in medicines in Edinburgh; supplying an accidental omission in the 44 Geo. III. c. 98.

Sect 4 —Contains an exemption of mineral and other waters from duty, in favour of victuallers, &c , now unnecessary to be referred, the duties on those articles being wholly repealed by the 3 & 4 Will IV c 97.

At the end of the list of medicines charged with duty, by name, is the following, *viz* ·—

"And also all other pills, powders, lozenges, tinctures, potions, cordials, electuaries, plaisters, unguents, salves, ointments, drops, lotions, oils, spirits, medicated herbs and waters, chemical and officinal preparations whatsoever, to be used or applied externally or internally as medicines or medicaments for the prevention, cure, or relief of any disorder or complaint incident to or in anywise affecting the human body, made, prepared, uttered, vended, or exposed to sale by any person or persons whatsoever, wherein the person making, preparing, uttering, vending, or exposing to sale the same, hath or claims to have any occult secret or art for the making or preparing the same, or hath or claims to have any exclusive right or title to the making or preparing the same, or which have at any time heretofore been, now are, or shall hereafter be prepared, uttered, vended, or exposed to sale under the authority of any letters patent under the great seal, or which have at any time heretofore been, now are, or shall hereafter be by any public notice or advertisement, or by any written or printed papers or hand bills, or by any label or words written or printed, affixed to, or delivered with any packet, box, bottle, phial, or other inclosure containing the same, held out or recommended to the public by the makers, venders, or proprietors thereof as nostrums or proprietary medicines, or as specifics, or as beneficial to the prevention, cure, or relief of any distemper, malady, ailment, disorder or complaint incident to or in anywise affecting the human body "

The schedule also specifies certain exemptions

55 Geo III c 184

Sect 54 —The duties and licences not to extend to ginger and peppermint lozenges, nor to any other article of confectionary, unless sold as medicines, or as beneficial for the prevention, cure, or relief of any distemper, malady, ailment, or disorder incident to the human body

Ginger and pepperment lozenges exempt

3 & 4 Will IV c 97

Sect 30 —So much of the schedule to the 52 Geo III c 150, is hereby repealed, as is contained in the following words, *viz* —

"Waters, *viz* —All artificial mineral waters, and all waters impregnated with soda, or mineral alkali, or with carbonic acid gas, and all compositions, in a liquid or solid state, to be used for the purpose of making or compounding any of the said waters "

Mortgage.

THE special provisions applicable to mortgages, only, will be found under this head. For the enactments relating to those instruments in common with others see "INSTRUMENTS."

44 Geo. III. c. 98.

Duties.

Mortgages were first charged with *ad valorem* stamp duties by this Act; previously thereto they were subject to duty as Deeds, in general.

48 Geo. III. c. 149.

Duties repealed.
New duties.

By this Act the duties imposed by the 44 Geo. III. c. 98, were repealed, and others granted in lieu; and, in the schedule, were contained various notes as to the mode of charging the duties on mortgages, together with exemptions, in certain cases; all of which are repeated by the 55 Geo. III. c. 184, and will be found in the TABLE.

53 Geo. III. c. 108.

Duplicates.

Sect. 8.—Where there are duplicates or triplicates of mortgages or conveyances upon the sale of property, only one is to be charged with *ad valorem* duty, the other is to be charged with the ordinary duty on deeds in general; the latter to be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty.

Mortgages exempted from *ad valorem* duty may be stamped with a denoting stamp.

Sect. 10.—In cases of deeds and instruments by the 48 Geo. III. c. 149, exempted from the *ad valorem* duty on mortgages, on the ground of the same being made in pursuance of any agreement, contract, or bond charged with, and which shall have actually paid the said *ad valorem* duty, the Commissioners of Stamps may cause the same to be stamped with some particular stamp for denoting or testifying the payment of the said *ad valorem* duty; provided such deeds or instruments shall have paid the other duties to which they are liable, and be produced, duly stamped, accordingly.

NOTE.—Similar provisions are contained in the 55 Geo. III. c. 184, and will be found in the TABLE.

55 Geo. III. c. 184.

Duties repealed.
New duties.

The duties granted by the 48 Geo. III. c. 149, were, by this Act, repealed, and others were substituted, with various special provisions and exemptions, as contained in the schedule. For all which see the TABLE.

3 Geo IV. c. 117.

The duties on all transfers, assignments, dispositions, assignations, or reconveyances of mortgages or wadsets, and other securities described under the head "MORTGAGE," imposed by the 55 Geo III c 184, and the Irish Act, 56 Geo III c. 56, were repealed

The duties on transfers of mortgages

Sect 2 —By this section, in lieu and instead of the duties repealed, the duties following (besides progressive duties) were granted, that is to say, upon any transfer, assignment, disposition, assignation, or reconveyance of any mortgage, or of any other security in the said Acts, and the schedules thereto annexed, in that respect severally mentioned, or of the benefit thereof, or of the money or stock thereby secured, provided no further sum of money or stock be added to the principal money or stock already secured, a stamp duty in Great Britain of 1*l* 15*s*, and in Ireland of 1*l* British currency And it was provided, that if any further sum of money or stock should be added to the principal money or stock already secured, the *ad valorem* duty on mortgages, payable under the said recited Acts respectively, should be charged only in respect of such further money or stock

New duties

Sect 3 —This section enacts, That where any deed or other instrument already made or thereafter to be made as an additional or further security for any sum or sums of money, or any share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England or of the Bank of Ireland, already or previously secured by any bond on which the *ad valorem* duty on bonds, charged by the said Acts, should have been paid, such deed or other instrument should be and be deemed to be and to have been exempt from the several *ad valorem* duties charged by the said Acts on mortgages, and be charged and chargeable only with the ordinary duty payable on deeds in general in Great Britain and Ireland respectively, but if any further sum of money or stock should be added to the principal money or stock already secured, the said *ad valorem* duties respectively should be charged in respect of such further sum of money or stock, and if necessary for the sake of evidence, the deeds and instruments thereby exempted from the said *ad valorem* duties should be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty upon all the deeds and instruments relating to the particular transaction, provided such deeds and instruments should be produced at the Stamp Office in London or Dublin (as the case might require), and should appear to be duly stamped with the duties to which they were liable

Mortgages exempt from *ad valorem* duty where the *ad valorem* bond duty previously paid.

Sect 6 —The provisions of all former Acts relating to the duties repealed were directed to be applied to the new duties

Former provisions to be applied

INSTRUMENTS of various descriptions are, it will be observed, charged with stamp duty under this head; of which, some would not fall within the generic term *Mortgage;* and others might be, doubtfully, considered as included therein. The first, and most comprehensive description of instrument, is that of "MORTGAGE," in its simplest signification; and it was, manifestly, the intention of the legislature to give full scope and effect to the meaning of the term, in this place, and to charge with duty every thing that could be deemed to be comprised within it; and more than that, to extend the same charge to instruments by which a security, in the nature of a mortgage, is created, but which that word, in its ordinary sense, would not comprehend; and by specifying certain general descriptions of property, as the subject-matter of the instruments, without which the several clauses wherein they are mentioned would be, in form and construction, incomplete, it could not have been in contemplation to circumscribe the operation of the term. The first clause runs thus:—"Mortgage, conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion, of or affecting any land, estate, or property, real or personal, heritable or moveable whatsoever."

So comprehensive a form of words would seem scarcely to leave room for the use of terms by which other property, of any kind, could be comprised; and yet a limit has been imposed upon it; and property, which is the constant subject of bargain and sale, and of transfer by deed, has been excluded by the interpretation of the Court.

As to what is property within the Act.

Judgment debt.

In *Warren* v. *Howe* (*a*) a deed was produced, whereby a judgment debt, due to the defendant, amounting to 168*l*, was assigned to the plaintiff, as a security for a debt of 50*l*. 5*s*., owing to him from the defendant. It was stamped with 30*s*., the *ad valorem* mortgage duty on the amount secured; but the learned Judge who tried the cause was of opinion, that such duty did not apply; and that, therefore, the deed should have been stamped with the

(*a*) 2 B & C 281; 3 D. & R. 494.

common deed stamp of 35*s.*; and the plaintiff was nonsuited. The Court, on motion, was, afterwards, of the same opinion. The case was, most strangely, argued by counsel with reference to two subjects of charge, in the Stamp Act, that could, by no possibility, have anything whatever to do with it. The one was, *conveyance of property* ON SALE, under the head "CONVEYANCE;" and the other, *conveyance in trust for sale, but intended only as a security* under the head "MORTGAGE;" it being contended, that if the judgment debt in question was not property, within the former, it was, within the latter. And it was equally singular, that the Court should pursue the same track, by answering this argument; holding, that a judgment debt was not property, within the meaning of the Act; the words of which were, "*Conveyance of any right, title, interest, or claim, to any lands, tenements, rents, annuities, or other property;*" the duty being charged, "*for, or in respect of the deed whereby the lands, or other things sold, should be conveyed to the purchaser;*" that the statute enumerated things, the subject of sale, and, usually, converted into money; the expression, "*other property,*" applying only to property of the *same description;* that the deed, clearly, did not fall within the other clause adverted to, because it was not a conveyance in trust for sale.

The effect of thus alluding to the wrong head in the schedule, is, that the decision must be considered as expressly referring to both *Conveyance* and *Mortgage;* the language quoted is to be found under the former title; which, although more particular in detail, is not, as to the property included, more comprehensive, in terms, than that under the title, *Mortgage,* even if so much so. As regards the reference to the head of mortgage, there would seem to have been, altogether, a mistake, as to the clause under which the deed fell. It certainly, was, simply, a mortgage; there appearing to be no ground whatever for saying that it was a conveyance of property in trust to be sold. Admitting, however, that no regard was had at all, (and it is difficult to suppose that it was kept out of sight,) to the first clause in the schedule, under the title "MORTGAGE," where an instrument is charged by that name merely, without any further description, except as to the property comprised in it, the decision must, it is apprehended, however unsatisfactory it may be, (and it is well known to be, by no means, generally, agreeable to the opinion of the members of the bar,) be received and considered as applicable to the case of mortgage, in general; the only principle established by it being, that a judgment

debt, and property of that kind, is not property the subject of sale, or mortgage, within the meaning of the Stamp Act. See, however, the remarks on the case under the title "CONVEYANCE *upon sale*" (*b*), where the propriety of the decision is controverted.

Commission.

It may be very questionable whether the case of *Pooley* v. *Goodwin* (*c*) has not overruled that of *Warren* v. *Howe;* if it amounts to anything at all, it must have that effect. It is true, that the point upon which *Warren* v. *Howe* was decided, was not, directly, presented to the Court, in the argument in the subsequent case; but it was, necessarily, involved in the case; and although, speaking with submissive deference and respect, it may be more than doubtful, whether *Pooley* v. *Goodwin* can be sustained, in reference to the question professed to be determined by it, yet it may be admitted as an authority of equal weight with the doubtful case of *Warren* v. *Howe*, on the point common to both.

The defendant, in *Pooley* v. *Goodwin*, was an architect, employed to build a house; and was to receive 7½ *per cent.* on the expenditure; and being indebted to the plaintiff in 150*l.*, and to *B. & M.* in 997*l.* 8*s.* 11*d.*, he executed a deed, whereby he assigned to *B. & M.*, all the money which was then, or should, thereafter, be due to him on account of such per-centage; upon trust, first, to pay the expenses; and then, to pay to the plaintiff 150*l.*; and to retain the residue towards payment of the debt due to themselves. The deed contained, also, a covenant to pay the debt. It was stamped with 5*l. ad valorem;* being the amount of the duty on a mortgage for securing a sum exceeding 500*l.*, and not exceeding 1000*l.* It was objected, that if the deed was a conveyance upon sale, the stamp should have been 12*l.*; if a mortgage, then 6*l.*, the consideration, in one case, and the money secured, in the other, being upwards of 1000*l.*; but the Court held that the deed was not a mortgage, but was an absolute conveyance; and that, as it was proved that the commission did not amount to 500*l.*, (*Nev. & Man.* 300*l.*,) the stamp was sufficient.

Now, it must be evident, that if there was any distinction between this case and that of *Warren* v. *Howe*, as to the nature of the subject-matter of the deed, it was in favour of the latter being *property*, within the Act of Parliament, rather than the former; in either case it was no more than a debt, a *chose in action;* but, in one, it was a debt of record, held *not* to be property; and in the

(*b*) Page 223, *ante*.
(*c*) 4 A. & E. 94; 5 N. & M. 466; 1 H. & W. 567.

other, a mere simple-contract debt, decided upon by the Court, *as* property.

Some remark, however, upon the case of *Pooley* v. *Goodwin* is necessary, in regard to two points, more immediately before the Court. First, As to the nature of the instrument; and, secondly, As to the amount of *ad valorem,* or other duty, payable on it, whatever head it might be considered as ranging under.

As to the first point—What were the object and effect of the deed? The Court said it was an absolute conveyance, and that, *as the commission did not amount to* 500*l.*, the stamp was sufficient; referring, therefore, for the duty, to the head, "*Conveyance upon Sale;*" but, it may be asked, how could this transaction be deemed a sale? Who was, or were, the purchaser, or purchasers? and what was the consideration moving to the vendor? The transaction, most assuredly, was not a sale; the deed, therefore, was not a conveyance on sale. That a Court of equity would have treated it only as a security, there can be as little doubt; and if so, it was a mortgage, within the meaning of the Stamp Act; and so, it is respectfully submitted, the Court should have viewed it, notwithstanding the assignment might have been absolute, at law. It would be anomalous, that a deed should be liable to stamp duty as a conveyance on sale, at law, and as a mortgage, in equity. The character of a deed with reference to the Stamp Act, and the construction of the Act, in regard to the deed, must be the same in all the Courts, notwithstanding the difference in the effect given to the deed, in the different Courts. It is quite true that an instrument must, speaking generally, be stamped according to its purport and contents, and not according to facts to be proved extrinsically; and, therefore, the Stamp Act consistently imposes a mortgage duty on any defeazance, or declaration for defeating, or making redeemable, or explaining, or qualifying any conveyance of property, apparently absolute, but intended only as a security. This, however, can only be necessary where the absolute conveyance does not show the real nature of the transaction; and therefore, where it is apparent that the object of the deed is, merely, to secure the payment of a debt, although, in terms, it might be an absolute conveyance, there could be no difficulty in determining that it fell under the head of Mortgage, in the Stamp Act. The Court, however, having decided that the deed in *Pooley* v. *Goodwin* was an absolute conveyance, and not a security, it remained only to say what duty attached to it; and, upon this second point, the utmost possible respect that can be entertained for the opinion

of the learned Judges who decided the case, must not be allowed to prevent the expression of the most unqualified objection to that given by the Court, in two respects; *viz.*: as to the class of instruments under which the deed was chargeable; and as to the mode of ascertaining the amount of duty thereon.

It has already been suggested, that as the transaction was not a sale, the deed, although absolute, as held to be, could not be a conveyance *on sale;* it may be conceded to be an absolute conveyance, but it does not follow that it was on a sale; if, however, it was on a sale, still, *ad valorem* conveyance duty could not attach, unless the amount of the purchase or consideration money was expressed therein; and, as before asked, what was the consideration money expressed in the deed? was it the amount of the two debts? or, was it so much of the debts as the commission amounted to? that is to say, was it a purchase of the commission with so much of the debts as the commission might happen to be? and, if the commission had exceeded the debts, would it have been a purchase of the whole of it at the price of the debts?

It is an inherent principle of the Stamp Laws that an instrument must, in every instance, be stamped with duty according to the circumstances as they exist at the moment it is executed; no subsequent matter, no calculations to be afterwards made, can affect the question; the parchment or paper is required to be duly stamped before anything is written thereon, it being a mere indulgence that a stamp is, subsequently, allowed to be impressed, even on the payment of a penalty; and this is more especially the case in conveyances upon sale, the duty being charged on the purchase money *expressed* in the deed, the amount of such purchase money being required to be truly inserted. Assuming, therefore, that the Court had regard to this state of the law, it can scarcely be supposed that it considered the amount of the commission to be a matter of doubt, or uncertainty, at the time of the execution of the deed, and yet it would certainly seem, from the tenor of the instrument, that the fact could not possibly have been then known; if it was known, then, to make the deed liable to *ad valorem* duty as a conveyance, it should have been *expressed;* if it was not known, not only could it not have been expressed, but no *ad valorem* duty was capable of being assessed; the consequence, therefore, of necessity, follows, that if the deed was not a mortgage, but an absolute conveyance, as held by the Court, it fell under no particular head in the Stamp Act, but was liable to the ordinary duty of 35*s.*, as a deed, not otherwise charged, or as a conveyance, not otherwise

charged. It may be remarked, however, that the parties, themselves, treated it as a mortgage, by impressing it with a 5*l.* stamp, there being no such amount of duty under the title of conveyance.

The very great importance of the subject, and the propriety of a right understanding upon the point, render any apology for this lengthened observation unnecessary.

Mortgages for unlimited sums.

The *ad valorem* duty is imposed on the different instruments specified under the title of mortgage, in respect of any *definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable,* for which any such instrument is made as a security; the highest duty being 25*l.*; and where the security is for money to be afterwards *lent, advanced, or paid, or which might become due upon an account current,* (except as therein mentioned,) the amount of which is uncertain, and without limit, the highest duty is payable; but if the amount of the security be limited, the duty is chargeable according to the limit.

In deciding on cases of such unlimited securities, regard must not be had to the probable amount of money to become due, in order to fix a limit to the duty thereon.

The decisions in the cases which have, from time to time, engaged the attention of the different Courts, as to the liability of a deed to this duty of 25*l.*, where the money secured is unlimited, seem to have established that the sums, *in futuro,* in respect of which the liability attaches, must possess three characteristics, *viz.*:—

1st. They must be such as are not incidental to the mortgage, and would not be allowed to the mortgagee in the absence of an express stipulation.

2ndly. They must become debts due from the mortgagor.

3rdly. They must be a charge upon the mortgaged premises.

Premiums on insuring a life not limited.

In *Halse* v. *Peters* (*d*), a mortgage of property held for a term of years, determinable with a life, was made for securing a debt of 1500*l*, with a covenant that the mortgagee might insure the life of the *cestui qui vie,* in 1000*l.*, for seven years, to be applied (if payable,) towards the discharge of the 1500*l.* and interest, *and of the premiums, costs, and charges;* which premiums, costs, and charges the mortgagor covenanted to repay; the deed was stamped with a 6*l.* stamp, as for a sum exceeding 1500*l.*, but not exceeding 2000*l.*

(*d*) 2 B. & Ad. 807.

but the Court held, that the amount secured being without limit, the deed should have had a 25*l.* stamp.

Incidental expenses.

Such sums as would, although without any express contract, be allowed to a mortgagee in equity, *ultra* the principal money and interest, are not to be noticed, in reference to the stamp duty; therefore, any indefinite amount of moneys of this description, expressly charged, will not subject the instrument to duty, beyond that for the principal sum secured, even though interest be made payable thereon. A mortgage was made to secure 1700*l.* paid to a former mortgagee, and a further sum of 1300*l.*, advanced to the mortgagor, and all sums which the mortgagee should expend or disburse, for or in respect of the mortgage, with interest thereon at 4*l.* 10*s. per cent.* The deed was stamped with 9*l.*, being the duty for 4000*l.*, and not exceeding 5000*l.*; but it was insisted that it should have been stamped as for an unlimited amount. The Court held that it was sufficiently stamped; the deed contained no power which the mortgagee might not enforce under an ordinary mortgage; he is authorized, only, to recover expenses which he would be allowed in the Master's office, and which, necessarily, follow the power of lease, and sale, and would be considered incidental to the mortgage (*e*).

Tindal, C. J., in giving judgment, referred to the case of *Dickson* v. *Cass* (*f*); and in drawing the distinction between the two cases, observed, that there, the payment of commission was necessary to make the instrument available to the borrower; in the present case the expenses had no relation to the advance of the money, but only to the proceedings which the lender might be compelled to take, to make the security available to himself; and that in *Dickson* v. *Cass*, the expenses would not be such as the banker, (the obligee) would have been entitled to on the bond, unless specified; whereas, in the other case, they would be allowed to the mortgagee, whether specified or not. The charge of interest made no difference; and as to the expenses, the stipulation did not extend the security.

Expenses of renewal of lease.

Doe dem. Jarman v. *Larder* (*g*), was the case of a mortgage of leasehold property, held for a term determinable on lives, made for securing 130*l.*; with a power given to the mortgagee to pay for the renewal of the lease, on the expiration of a life, such payment not to exceed 70*l.* The deed was stamped with 2*l.*, sufficient for

(*e*) *Doe dem. Scruton* v. *Snaith*, 8 Bing. 146; 1 Moore & Scott, 230.

(*f*) Page 200, *ante*.

(*g*) 3 Bing. New Cases, 92; 2 Hodges, 186.

200*l.*; but, inasmuch as it contained a covenant by the mortgagor to procure the renewal, without any limitation, it was objected that the deed was a security for an unlimited amount; and, therefore, required a stamp of 25*l.*; but the Court held that the stamp was sufficient.

The only express security for any sum beyond 200*l.*, in this case, was the personal covenant of the mortgagor; and upon which no *ad valorem* duty was chargeable; if, however, such covenant could be considered as extending the charge to the land, then, probably, the case would fall within the rule in the preceding cases, the expense of a renewal being one which the mortgagee would be allowed without a stipulation (*h*).

Rates and taxes.

Doe dem. Merceron v. *Bragg* (*i*), is to the same effect as *Doe* v. *Snaith*. The proviso for redemption was subject to a covenant, by the mortgagor, to pay all rates and taxes then imposed, or to be imposed; and the Court held, that the mortgagee required no such stipulation. From the report of this case, however, in *Nev. & P.*, it would seem, that Lord *Denman* set the case of *Doe* v. *Snaith* in opposition to *Halse* v. *Peters*, which had not been reported when the subsequent case was determined; observing, that they were of opinion that *Doe* v. *Snaith* should prevail; that the case of *Preussing* v. *Ing* (*k*), (in which it was held that a bill for payment of money, with interest, was chargeable with stamp duty for the principal sum only,) upon which the Court mainly relied, did not appear to have been cited in *Halse* v. *Peters*. It is humbly conceived that this latter case does not, in any way, conflict with *Doe* v. *Snaith*, but that both may stand; the substantial difference being, that in *Doe* v. *Snaith*, as well as in *Doe* v. *Bragg*, the sums to which no limit were affixed, were incidental to the mortgage; and for the payment of which no express stipulation was necessary, being in the same category as interest; but, that in *Halse* v. *Peters*, the uncertain sums to be paid were totally independent of the mortgage, and such as, without an express stipulation would not be allowed; and moreover, the case of *Halse* v. *Peters* is distinguishable according to another principle, laid down by Mr. Baron *Parke* in *Wroughton* v. *Turtle*, *viz.*, that the sums to be paid by the mortgagee, were made a debt, due from the mortgagor, by his covenant. It is open to remark, however, that the money to be received from the insurance of the life in *Halse* v.

(*h*) See *Lucam* v. *Mertins*, 1 Wils. 34.

(*i*) 8 A. & E. 620; 3 Nev & P. 644; W. W. & H. 184.

(*k*) 4 B. & Ald. 204.

Peters might be considered part of the mortgaged premises, and that the premiums were incidental thereto; and if not, that they were not charged upon the property, the security resting only on the covenant.

So, also, costs, secured by a mortgage, does not render the higher duty payable (*l*).

Future payments not chargeable with duty unless they become debts.

Wroughton v. *Turtle* (*m*), was the case of a mortgage of leasehold property for years, determinable on lives, for securing 500*l.* advanced. In the original lease was a covenant, on the part of the lessor, for a renewal of the lease on any of the lives dropping, on payment of 60*l.*; and the mortgage contained a covenant, that, on any such event happening, the mortgagor would renew; but that in case he should neglect to do so, it should be lawful for the mortgagee to renew; and that all the fines, fees, costs, charges and expenses of the mortgagee in and about the same, should be a charge on the premises, together with interest thereon; and that the premises should not be redeemable without payment of the amount thereof, as well as of the 500*l.* The deed was stamped with the mortgage stamp for 500*l.* only; but it was contended that it should have been stamped as for an unlimited amount.

The Court held it to be sufficiently stamped. Mr. Baron *Parke* delivered the judgment of the Court to the following effect:—"There is no covenant in the mortgage by the mortgagor, to repay the money to be advanced. It is a well settled rule of law that every charge on the subject must be imposed by clear, unambiguous words; and there are no words in the statute which clearly impose a duty on such an instrument as this, beyond the *ad valorem* duty on the 500*l.*" After referring to the two classes of debts, present and future, the learned Baron proceeded—"The first class, in express terms, embraces present loans and *debts* only; the second ought to be construed in the same way, to apply to loans and debts only; for there is no reason why a mortgage, for the same description of payment, should be subject to duty in one case, and not in the other. By holding that the word "paid," means so paid as to constitute a debt, and the repayment of which the mortgage is to secure, the whole is rendered reasonable and consistent; and I reconcile the exemptions with this doctrine, by observing, that the legislature has exempted such payments, even though they might constitute debts by the agreement of the parties.

(*l*) Lessee of *Lysaght* v. *Warren*, 10 Irish Law Rep. 269.

(*m*) 11 M. & W. 561; 1 Dow. & L. 473.

And this is consistent with the cases of *Paddon* v. *Bartlett*, *Doe* v. *Bragg*, and *Doe* v. *Snaith*. The case of *Dickson* v. *Cass*, if not distinguishable on the ground that it really was a security for such advances as the bankers, [the obligees,] should make, as it was in terms, though there was a recital of an agreement to advance 1000*l.* only, *or*, on the ground mentioned by C. J. *Tindal*, in *Doe* v. *Snaith*, must be considered as over-ruled by the latter case. *Halse* v. *Peters* is, also, distinguishable. There, the premiums of insurance were to be paid *for* the mortgagor, and repaid by him, and would, therefore, be a debt. There is another principle on which some of the Judges appear to rest the case of *Doe* v. *Snaith*, as well as *Doe* v. *Bragg*, which is, also, applicable to this, that the expression in the instrument, of that which the law implies, has no effect as to the necessity of a further stamp, '*expressio eorum quæ tacitè insunt nihil operatur.*' Here the fines, and costs of renewal would be a charge on the property without the stipulation in question."

Compensation to trustees.

Paddon v. *Bartlett* (*n*), alluded to in the last case, as one with which the principle there laid down was consistent, is as follows, *viz.* :—A mortgage was made to trustees, for the purpose of securing 1137*l.* and interest; and, after empowering the trustees to sell the premises, it authorized them, out of the proceeds, to pay and discharge the costs and expenses to be incurred in the execution, and due performance of the trusts, and, also, a reasonable sum of money, by way of satisfaction, for their trouble in and about the trusts. The deed was stamped with 5*l.*, for a sum exceeding 1000*l.* and not exceeding 2000*l.*; but it was contended that it ought to have been stamped with 25*l.*, as for an unlimited amount. The Court were all of opinion that there was nothing in the point; suggesting that the word *reasonable* gave a limit; and that it lay upon those taking the objection to show, that a *reasonable satisfaction* would raise the whole amount above 2000*l.*

The actual result of this case was, no doubt, the proper one, the stamp was sufficient; but the suggestion why the circumstances might not require that a higher stamp should be impressed, involves a doctrine so absolutely opposed to the principles of the Stamp Laws, that it cannot be allowed to pass unnoticed. It is a fundamental rule of those laws, that the measure of duty shall be accurately defined, and the amount, as already observed, ascertained previously to the completion of the instrument, this being

(*n*) 2 A. & E. 9; 5 N. & M. 1.

essential to a compliance with the strict provision requiring instruments to be written upon the proper stamps; it is, moreover, as also before noticed, a general rule, that the instrument itself shall furnish the *data:* that it shall speak for itself, as well as to its liability, as its effect; at all events, it is out of the question that the stamp can be made to depend upon any future act. Referring to *Paddon* v *Bartlett*, it may be observed, that the performance of the trusts might occasion trouble far exceeding anything that was contemplated; and the compensation that the trustees, or those called upon to determine the point, might deem reasonable, might be of such an amount as the maker of the deed would have considered very unreasonable; and this circumstance would influence the stamp duty long after the deed was made; it could not, therefore, have been known, at the time the deed was executed, what stamp would turn out to be applicable to it; and, consequently, the law alluded to could not possibly have been complied with. If the Court had held the case to be within that of *Doe* v. *Snaith*, and that nothing was payable for the compensation to the trustees, there would, perhaps, have been no objection to it; no difficulty would have been involved by it; the principle would have been intelligible; but, as it is, all principle is broken through.

The rule, as to the deed itself furnishing the means of deciding the precise amount of duty chargeable upon it, is constantly acted upon by the Courts; indeed the adopting of any other would be attended with incalculable inconvenience.

The case of *Reed* v. *Wilmot* (*o*) may be referred to as an instance of the practice. There, a mortgage made to three persons for securing, as the facts appeared on the trial, money due to each of them, and liable, therefore, if such facts had been stated, to three several stamp duties, exceeding, in the aggregate, the stamp on the deed, was held to be sufficiently stamped with the duty for the total amount secured; because it did not appear, on the face of the deed, that a separate sum was due to each mortgagee. Many other similar instances might be mentioned.

Several deeds for securing unlimited sums.

Where a mortgage is made for an unlimited amount, and is stamped, accordingly, with the highest duty, any further mortgage for the like purpose, between the same parties, is exempt from *ad valorem* duty.

This appears to be the result of the case of *Robinson* v. *Macdonnell* (*p*).

(*o*) Page 373, *post*.

(*p*) 5 M. & S. 228.

By deed dated 10th May, 1810, reciting that *Robinson and Co.*, had requested *Sharpe and Co.* to lend them divers sums of money, which they had agreed to do on the security of five ships; and, that such ships had been, by five bills of sale of the same date, assigned to *Sharpe and Co.*, *Robinson and Co.* assigned to *Sharpe and Co.* all the freight and earnings then due, and to become due, and the benefit of the contracts for the hire of the ships; subject to a re-conveyance of the said ships, &c., if *Robinson and Co.* should, within two months after request, pay to *Sharpe and Co.* all sums of money which they had advanced, or might thereafter advance.

By another deed, of the 12th November, 1810, the freights, &c., of other ships were assigned to *Sharpe and Co.*, by *Robinson and Co.*, and by a third party, as a further security for the same sums. Each of these deeds was stamped with 20*l.*, the proper duty under the 48 Geo. III. c. 149, for securing money to an unlimited amount. On the second deed was indorsed another, dated 15th December, 1810, stamped with 30*s.*, (the common deed duty under the same Act,) whereby *Robinson and Co.* assigned to *Sharpe and Co.*, the freight, earnings, &c., of the ship *Warre*, with a proviso to stand possessed thereof upon the same trusts as were declared in the deed of the 10th of May. And by a bill of sale of the 4th July, 1811, stamped with 30*s.* and purporting to be made in consideration of 10*s.* the ship *Warre* was assigned to *Sharpe and Co.* The advances by *Sharpe and Co.* were the consideration for this latter deed, and for which it was executed as a security. It was objected that the deed of the 15th December was not properly stamped, not being within the exemption in the said Act, as a deed made as an additional or further security for any sum of money already secured, &c.; which was intended to apply to the same sums of money then advanced, not to advances *in futuro*, or a kind of floating balance. The same objection was, also, taken to the bill of sale of the 4th July, 1811; and it was, likewise, objected, that this latter instrument was void, the true consideration not being stated.

The Court held that the deed of the 15th December was, in effect, no more than an additional security for the same sum; that is, the same amount secured by the former deed; and that the default of setting forth the true consideration, and the want of the proper stamp duty, though they subjected the parties to penalties, did not avoid the bill of sale.

Upon the latter point no authority could have been produced

to the Court in support of the objection, the validity of a deed not being affected by an omission to state the true consideration; nor has the legislature thought it requisite to impose a penalty for such an omission, in the case of a mortgage; the interest, either of one party or the other, being considered an ample security against anything like a fraud, on that ground.

Upon the primary point, it can, scarcely, be doubted, that, upon a reasonable construction of the statute, the decision was correct; questions of the same kind are, however, occasionally, addressed to the Stamp Office. The criterion seems to be, whether or not the moneys, for which the second deed, in such a case, is a security, are secured, also, by the former instrument; if they are, there can be no pretence for subjecting them to *ad valorem* duty a second time; nor, of course, can it make any difference, that the subsequent mortgage is for further securing a definite and certain sum, either a portion, or the whole of what may be then due; it must be equally exempt from *ad valorem* duty. These remarks will not apply where the first deed is made to secure a *limited* amount; although, if, in that case, the second deed specify the same objects, and, clearly, show, that the same sums are secured by both instruments, *ad valorem* duty will not be, again, payable.

The security is not available beyond the sum limited.

Where a mortgage is made to secure the balance of a running account with bankers, and a limit is fixed in the deed, for the purpose of saving stamp duty, the Court cannot, of course, make the security available for a principal sum, beyond the amount so fixed. On a point of this kind, in *Richards* v. *Macclesfield* and *Cocks* v. *Edwards* (*q*), the Lord Chancellor observed, that the parties had, themselves, by inserting a limit, in order to save the difference of duty between 25*l.* and a smaller amount, lost their security to a very great extent.

Assignment upon trust for creditors.

By an indenture *A. P.* and her three sons assigned all their personal estate to certain creditors, upon trust to sell the same, and, out of the proceeds, to pay themselves the debts owing to them, and apply the residue in satisfaction of the other creditors; paying over the surplus to the assignors. It was objected that the deed, which was stamped with 1*l.* 15*s.*, should have been stamped with *ad valorem* duty, as a conveyance upon sale, or, at least, as a mortgage; but the Court determined, that it came within the provision as a conveyance made for the benefit of creditors generally, and was,

(*q*) 10 L. J. R. (N. S.) Chan. 329.

therefore, sufficiently stamped (*r*). No shadow of an argument appears to have been offered in support of any other view.

The provision alluded to by the Court, is the *exception* from the mortgage duty charged on any conveyance of property in trust to be sold, or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, *where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number.*

This exception has been considered ambiguous by a learned author (*s*); and but for that circumstance no particular mention would have been made of it here. The uncertainty would appear to arise only from the want of a proper construction of the entire clause. No difficulty, however, upon this point has ever been felt by the writer, nor by any person with whom he has conversed upon the subject. Another learned author (*t*), in alluding to the remark of the former, has made the following suggestion by way of relieving the clause from ambiguity. The clause (he observes), seems to contemplate three different sorts of conveyances in trust, and two classes of persons,—creditors generally, and creditors specified.

1st. Where made for the benefit of creditors generally.

2nd. Creditors specified [however small their number] who shall accept the provision made for the payment of their debts in full satisfaction thereof.

3rd. Of creditors specified who shall exceed five in number, who are not required to accept the provision made for the payment of their debts in full satisfaction thereof.

To those who experience any difficulty in the matter the above may, perhaps, afford assistance in forming a correct opinion.

It is impossible to imagine how, in the case of *Coates* v. *Perry*, a suggestion could arise as to the liability of the deed to *ad valorem* conveyance duty, as upon a sale; the nature of the transaction forbids the idea, even if any measure of value existed; and, on the question of mortgage duty, the want of such measure precluded the possibility of assessing any *ad valorem* duty. In no case, whatever, can *ad valorem* duty attach, where there is no sum

Where the debt is not specified

(*r*) *Coates* v. *Perry*, 3 B. & B. 48; 6 Moore, 188.

(*s*) Coventry on Stamps, p. 237.

(*t*) Collins on the Stamp Laws, 175.

no *ad valorem* duty is payable.

specified, except in the instance of a mortgage for an unlimited amount, and then, only, where the sums to be secured are to become due *in futuro*.

Equitable mortgages.

It will be observed, that an agreement, accompanied with a deposit of title deeds, for making a mortgage, or for pledging, or charging the property comprised in any such deeds, is, specifically, charged with the mortgage duty. This would appear to extend to all cases of equitable mortgage, where a writing accompanies the deposit. At all events, whatever the writing may be, if it amounts to a mortgage, whether in law, or in equity, it is chargeable with *ad valorem* duty as a "mortgage;" which term is not, it is apprehended, to be limited, merely because of the specific mention of certain documents, which might, if not thus referred to, have been held to be embraced by it.

In a replevin cause the following document was given in evidence, *viz.*: "I, *J. W.*, having, on, &c., borrowed of *J. P.* 300*l.*, did then pledge with him certain title deeds, in order to secure him 300*l.* and interest. I did then authorize him to receive the rents; and I hereby confirm and allow to be good and valid, all acts, distresses, &c., and, particularly, a distress taken upon *W. P.*; and hereafter to be made and taken by him in the care, management, and receiving of the rents; and I ratify all acts, distresses, &c., made or to be made by the said *J. P.*, to the end that the rents may be secured and taken by *J. P.* during all my estate or interest." It was contended that this was an agreement charging lands, within the Stamp Act, as an equitable mortgage; it explained, and might be said to accompany the deposit. It was evidence of what the parties had agreed should be a security for a loan. The Court thought that it did not fall within the Act. It did not accompany a deposit; and no fraud had been suggested. It was a mere ratification or recognition of the distress, reciting the authority, and giving a reason for it (*u*).

A., as surety for *B.*, became bound for the payment of 600*l.* and interest, due from the latter to *C.*, and for the purpose of indemnifying the surety, *B.* gave him a bond for securing that sum and interest, stamped with the *ad valorem* duty; and, subsequently, assigned certain personal property to him, by way of mortgage, as a further security; with a power, in default of *B.'s* paying the debt due to *C.*, to sell such property, and, after reimbursing himself all expenses, to pay the principal and interest due to *C.*, and the sur-

(*u*) *Pyle* v *Partridge*, 15 L. J. R. (N. S.) Exch. 129.

plus to *B*. This deed was stamped with 1*l*. 15*s*., but it was contended that, in equity, it was a mortgage to *C*., and, notwithstanding the bond given to *B*., should have been stamped with *ad valorem* duty accordingly; but the Court said that *C*., not being a party, had no equity. It was likewise contended in this case; upon what ground it is difficult to understand, that, as between *B*. and *A*., the deed was chargeable with duty as for securing an unlimited amount; but the Court could consider it only a security for the same money for which the bond was given, *viz*., 600*l*. and interest, and held that, by reason of the bond, it was exempt from all *ad valorem* duty (*x*).

Deposit of bill of lading and policy.

In *Harris* v. *Birch* (*y*) the following letter was given in evidence, stamped as an agreement, *viz*.:—"Dear Sir,—Agreeably to the arrangement between the writer and yourself, we now wait on you with our draft for 500*l*., of which we beg your acceptance; with the understanding that we shall provide for the same at maturity; and, in consideration of your accepting said draft, we hand you, herewith, bill of lading, and policy of insurance, for wines daily expected, *per Jason*, now discharging part of her cargo at Waterford; and particulars of other wines we have placed in your name. These, together, will afford you security beyond the amount of the bill; with regard to the wines to arrive, we shall land and warehouse them to be held at your disposal. Assuring you it is our wish to place you beyond all risk, we have thus readily complied with your suggestions. We are, &c." The Court held that this was neither a mortgage, nor an agreement, accompanied with a deposit of title deeds, for making a mortgage.

Several instruments. Surrender of copyholds and deed of covenant at same time.

A conditional surrender of copyhold property was made to secure 100*l*. advanced, and by a deed, of even date, the surrenderor covenanted to repay the money borrowed; and that, in case of default, the mortgagee should have power to sell the premises. The deed was stamped with the *ad valorem* duty of 1*l*. 10*s*. It was objected that it was not a mortgage at all; and if it was, that it was within the proviso, in the 55 Geo. III. c. 184, that where several instruments, falling within the descriptions of those charged with the *ad valorem* duty on mortgages, are made at the same time, for securing the same sum of money, the *ad valorem* duty, if exceeding 2*l*., shall be charged only on one of them; and that the rest shall be charged with the duty to which the same may be liable under

(*x*) *Watson* v. *Macquire*, 5 M. G. & S. 836.

(*y*) 9 M. & W. 591; 1 Dowl. N. R. 902; 11 L. J. R. (N. S.) Exch. 219.

any more general description of deeds or instruments contained in the schedule; and that as the *ad valorem* duty did not exceed 2*l.* the deed was still liable to 1*l.* 15*s.*, but the Court's opinion was that the two instruments together constituted but one mortgage; that they did not fall within the proviso; and that the stamp was sufficient (*z*).

The only interpretation that can be put upon this judgment is, that the Court considered both instruments liable to *ad valorem* duty. It could not mean, that, because the Court looked upon the two instruments as amounting to one mortgage, only one duty, an *ad valorem* duty, was payable between them; the deed was the only instrument before the Court; and if that was to be considered as a mortgage, it was, undoubtedly, properly stamped. But the error was, in treating it as an instrument charged with duty as a mortgage. It was a deed of covenant, merely, and not a mortgage; and was rendered necessary by reason of the mortgage being of copyhold property; there being, of course, no covenants in a surrender of copyholds. The *ad valorem* duty is, expressly, charged, in the case of a mortgage of copyholds, on the surrender, if made out of Court, and on the copy of Court roll, if the surrender be made in Court; and if a deed of covenant be executed, whether before or after the surrender, or, as in the present instance, at the same time, it is liable, only, to stamp duty, as a deed not otherwise charged; and if a surrender be never made, but the person lending the money remains satisfied with the covenant to make it, there is, then, no mortgage, and, consequently, no *ad valorem* duty. Had the mortgage money in *Sellick* v. *Trevor* been of large amount, so as to have involved the payment of a higher duty than 1*l.* 15*s.*, the stamp contended for, the Court would, probably, have paused, before it would have held the *ad valorem* duty payable on the deed. This was the fact in the case next referred to, decided shortly after. The difference between the two cases was, that in one, the deed was contemporaneous with the surrender, and in the other, it was executed subsequently; the character of the instrument was, however, in each case, precisely the same; and in neither was it within the description of those charged with *ad valorem* duty.

Deed of covenant after a surrender.

Haywood v. *Bibby* (*a*) was the case of a deed of covenant, made after a conditional surrender; by which the defendant covenanted to pay the plaintiffs the mortgage money: and that in case of de-

(*z*) *Sellick* v. *Trevor*, 11 M. & W. 722.

(*a*) 11 M & W. 812; 1 Dow. & L. 290; 12 L. J. R. (N. S.) Exch. 404

fault the plaintiffs might enter and enjoy the land. The deed was stamped with 35*s.*, and a progressive duty of 25*s.* On the trial, it being considered, by Mr. Baron *Parke*, liable to *ad valorem* duty, it was rejected; but, on a motion, afterwards, made to the Court, the learned Baron admitted that the nature of the deed had not been properly understood; and it appearing to be a deed of covenant, merely, the Court held it to be sufficiently stamped.

In *Rushbrooke* v. *Hood* (*b*), a deed of the same description was produced in evidence, stamped only with 1*l.* 15*s.*; and was objected to, not on the ground that it was chargeable with *ad valorem* duty, but that, as the covenants were with several distinct parties, not, necessarily, having any connection with each other, there should have been several stamps of that amount each; but the Court considered one stamp sufficient. A question, however, arose as to another deed, subsequently made, upon a further advance of 100*l.* to the mortgagor of the copyhold, whereby he covenanted that the property should remain further charged with that sum and interest. The deed was stamped with 1*l.* 10*s.*, the *ad valorem* duty on 100*l.*, but it was contended that it should have had a 1*l.* 15*s.* stamp. The Court considered that it was properly stamped as a further charge. This opinion was, no doubt, correct. The covenant was not merely to pay the money, but it effected a charge upon the property, and the deed was, therefore, amongst those, expressly, made liable to *ad valorem* duty.

Mortgage for securing money to different persons; and charged also on copyhold and other property.

A person indebted to three others, severally, in distinct sums of money, amounting altogether to 365*l.*, assigned to them, by deed, certain lighters, by way of mortgage, to secure that sum, without specifying that a separate debt was due to each; at the same time he also surrendered, out of Court, certain copyhold property, to secure the same aggregate sum. The assignment was stamped with a 1*l.* 15*s.* and the surrender with a 4*l.* stamp, the latter being the *ad valorem* duty on a sum not exceeding 500*l.* The mortgagor became bankrupt, and his assignees sold the lighters; and an action was brought against them for the money. Two objections were taken to the stamps on the instruments, in reference to special provisions contained in the schedule to the 55 Geo. III. c. 184. First, that an *ad valorem* duty was papable in respect of each of the three several debts, in which case the total amount of such duties would have been 6*l.*; and, secondly, that such duties should have been impressed upon the assignment, and not upon the surrender.

(*b*) *Ante*, page 346.

Upon the first point the Court was of opinion that the duty was sufficient, it not appearing upon the face of the deed that a separate sum was due to each mortgagee; but that the second objection could not be got over; the *ad valorem* duty should have been upon the deed, and not upon the surrender (*c*).

It does not appear whether or not the transaction took place before the 6 Geo. IV. c. 41, which exempts from stamp duty, of any kind, all instruments for the sale, transfer, or other disposition, either absolutely, or by way of mortgage, of any ship, or vessel, or any interest therein; nor, if it did, does such exemption appear to have been brought to the notice of the Court. Assuming lighters to be property of the description mentioned in that Act, it would have been impossible to have sustained either of the objections.

Indorsement on a mortgage by mortgagee that part of the money secured was another person's.

In *Doe dem. Downe* v. *Govier* (*d*), a mortgage deed was produced in evidence which was a security for 420*l.*, and bore a 4*l.* stamp; but, indorsed upon the deed, was a declaration by the mortgagee that he had advanced only 350*l.* and that the remaining 70*l.* had been advanced by a third person; and that in the event of the property not realizing more than the 350*l.*, he was not to be held responsible. It was objected that there should have been a stamp for each sum; but *Reed* v. *Wilmot* being quoted, the deed was admitted. On motion in the Queen's Bench for a new trial, it being remarked that in *Reed* v. *Wilmot* the fact, that the money had been advanced by different persons, came out on the depositions of witnesses, but, that in the present case, it appeared on the deed, the Court observed, that the fact appeared from the deed, but in a form that made it parol testimony only; the right to sue was in one person only, though that person might be a trustee for another. The Court must abide by *Reed* v. *Wilmot*.

By-gone interest.

In *Pierpoint* v. *Gower* (*e*), a question arose as to the liability to duty of by-gone interest. A warrant of attorney, dated 9th Nov. 1840, was given to secure 1000*l.*, with interest from the 1st July preceding, which was stamped with 5*l.* On the 30th Oct. 1841, a bill of sale of property was executed, as a further security, for the same principal sum, and interest from the 30th Nov. 1840, to which day interest had been paid. This instrument was stamped with 35*s.* No objection appears to have been made to the warrant of attorney (which Mr. Justice *Maule* said there could be no dispute about); but it was insisted, that, as the bill of sale secured

(*c*) *Reed* v. *Wilmot*, 7 Bing. 577.
(*d*) 5 Law Times, 37.
(*e*) 4 M & G. 795; 12 L. J R (N. S.) C. P. 55; 2 Dow. N. R. 652; 5 Scott, N. R. 605; 6 Jurist, 952.

the payment of interest, previously due, some *ad valorem* duty was, at all events, payable upon it; but the Court observed, "It is enough to say, that before we decide that a double stamp is necessary, the words of the legislature should clearly require it."

Mortgage exempt from *ad valorem* duty where the money is secured by a warrant of attorney.

This case, as it appears in some of the reports, establishes a point which had, previously, been considered, at least, doubtful, *viz.*, whether a mortgage, given as a further security for money already secured by a warrant of attorney, on which the *ad valorem* duty had been paid, was exempt from *ad valorem* duty under the 3 Geo. IV. c. 117, s. 3, where bonds only are spoken of. A warrant of attorney and a bond were, for this purpose, considered the same.

See, also, the cases relating to bills and notes as to the question of stamp duty on those instruments in respect of interest, whether future or by-gone; and *Daines* v. *Heath* (*f*).

That a mortgage cannot be read in evidence unless it be duly stamped, is a proposition that needs no authority for its support; the case of *Wrench* v. *Lord* (*g*), however, goes to this point only. It was attempted to set up, as a mortgage, an entry in the vestry book, whereby the churchwardens consented to the liquidation of a debt due to the rector for money expended by him in repairing the church; and that a portion, 52*l.* 7*s.*, should be charged upon the income of the church land; but the book was not stamped as a mortgage, and, therefore, the Court, as a matter of course, refused to admit it. The case being reported, (for what object is not apparent,) it has been thought right to refer to it.

Re-demise.

A demise by the mortgagee to the mortgagor of the land charged, contained in the mortgage deed, for the purpose of better securing the payment of the accruing interest, would appear not to render a lease stamp necessary (*h*).

TRANSFER OF MORTGAGE.

NO point in conveyancing has, with regard to stamp duties, given rise to so much discussion, or occasioned so many inquiries at the Stamp Office, as the duty on instruments falling under this title. Recent decisions have materially affected the question of stamp duty on all, or, nearly, all transfers of mortgage; but, although it is not to be denied that difficulties have, from time to

(*f*) 3 M. G. & S. 938. (*g*) 3 Bing. N. C. 672.
(*h*) *Walker* v. *Giles*, 13 Jur. 588.

time, attended it, the writer does not concur with those who seem to think that the judgments alluded to have increased the perplexity; on the contrary, it is plain that many doubts and difficulties that formerly existed have been entirely removed by them; and clear and distinct propositions may now be laid down, upon certain points, about which such doubts precluded the expression of any satisfactory opinion, and which were the constant subject of controversy.

It is to be borne in mind, a circumstance overlooked, occasionally, by the Courts of law, that the duties imposed by the 55 Geo. III. c. 184, on transfers of mortgage, are, by the 3 Geo. IV. c. 117, *wholly* repealed; so that, in no instance, must they be referred to, in ascertaining the duty payable on a transfer of mortgage executed since the 15th August, 1822, unless, perhaps, for the purpose of assisting in the interpretation of the latter Act.

Transfer of mortgage with further advance.

The most prominent, if not the most difficult question under the 3 Geo. IV. c. 117, was, whether in the case of a transfer of mortgage, where a further sum was added to the principal money already secured, the transfer stamp, (as it is popularly termed,) of 1*l.* 15*s.*, was payable in addition to the *ad valorem* duty on the further sum. This point was set at rest by the decision in *Doe dem. Bartley* v. *Gray* (*h*), in which case the Court, taking a comprehensive view of the whole subject, as appears by the elaborate judgment delivered by the Lord Chief Justice, decided it in the negative. The same point would seem to have arisen in a previous case (*i*), in the Court of Common Pless, and to have elicited, from one, at least, of the learned Judges, an opinion to the same effect; but the case, as reported, is not sufficiently intelligible to admit of its being referred to as an authority.

The case of *Doe* v. *Gray* is as follows: By deed of 3rd Oct., 1821, *Carter* demised certain lands to *Rowlands*, for 1000 years, to secure 150*l.*, with a power of sale. Indentures of lease and release of the 23rd and 24th January, 1823, were executed; by the release, *Rowlands*, in consideration of 152*l.* 3*s.* 9*d.*, the amount of the principal and interest then due, paid to him by *Worsley*, assigned the term to *Bartley;* and, in consideration of a further sum of 197*l.* 16*s.* 3*d.* advanced to him by *Worsley*, *Carter* demised the lands to *Bartley* for the remainder of the term; these grants to *Bartley* being in trust for *Worsley*, to secure the money

(*h*) 3 Ad. & E. 89; 1 H. & W. 235. (*i*) *Martin's case*, 5 Bing. 160.

(together 350*l.*) advanced by him, and to attend the inheritance. By the same deed, *Carter* conveyed the reversion to *Worsley* in fee in trust to sell and raise the money due to him.

The release contained four skins of 1080 words each, and was stamped with the following duties, *viz.*, 1*l.* 15*s.*, 2*l.*, 2*l.*, and 1*l.*, making in all 6*l.* 15*s.*

It was contended that these stamps were insufficient; that the deed should have had a stamp of 1*l.* 15*s.* in respect of the transfer of the original mortgage, three progressive duties of 1*l.* 5*s.* each, and the *ad valorem* duty of 2*l.* for the additional sum, making together 7*l.* 10*s.*; or else, that it should be treated as an original mortgage for the whole sum, chargeable with the *ad valorem* duty of 4*l.*, and three progressive duties of 1*l.* each.

The Court held the stamps to be sufficient; Lord *Denman* delivered the judgment to the following effect, *viz.*:—

"The deeds operate doubly, *viz.*, by transfer of the original mortgage, and by conveyance of the fee, as a further security. As regards the transfer, the 55 Geo. III. c. 184, treats the transfer, where a further sum is advanced, as an original mortgage, and imposes a transfer duty of 1*l.* 15*s.* where no further sum is added to the principal money already secured; but these duties are repealed by the 3 Geo. IV. c. 117, which enacts, that in case of a transfer, provided no further sum be added, a duty of 1*l.* 15*s.* shall be paid, and a progressive duty of 1*l.* 5*s.*; and if any further sum be added, the *ad valorem* duty on mortgages shall be charged only in respect of such further sum. The transfer duty is imposed in both Acts with the same proviso, and, in the opinion of the Court, with the same effect, *viz.*, in those cases only where no further sum is added; here a further sum is added, and, therefore, the transfer duty is out of the question. The effect of the other part of the clause, it is considered by the Court, is to make this transfer an original mortgage for 200*l.*, subject to an *ad valorem* duty of 2*l.*, and progressive duties of 1*l.* each. But it is said that this is an original mortgage by reason of the conveyance in fee. The 55 Geo. III. c. 184, exempts from *ad valorem* duty, *but not from any other*, any deed made as an additional, or further security for money already secured by a deed which shall have paid the *ad valorem* duty, in case the further security is made by the same person who made the original security; but if any further sum be added, the *ad valorem* duty is charged in respect thereof. Here the person conveying the fee is the same person who created the term, and a further sum is added; therefore if the deed had been

simply a conveyance of the fee, and had not contained a transfer of the term, the duty would have been 2*l.* *ad valorem*, on account of the additional 200*l.*, and three progressive duties of 1*l.* each; *whether a common deed stamp also was necessary, under either of the Acts, it is not material to inquire, because the* 1*l.* 15*s.*, *erroneously put on these deeds, is sufficient to cover that stamp, if necessary.* But, as the deeds in question do contain a transfer of the original mortgage, it is plain, that before the passing of the 3 Geo. IV. c. 117, the exemption clause in the 55 Geo. III. c. 184, would not have applied, and this must have been treated as a new and original mortgage, liable to the *ad valorem* duty of 4*l.* The 3 Geo. IV. c. 117, has, however, repealed that part of the former Act, and substituted the same *ad valorem* duty of 2*l.* on the transfer, in respect of the additional sum; and, as the *ad valorem* duty depends on the sum secured, and not on the value or number of the securities, and is only to be paid once, it follows that the case is the same, in effect, as if the *ad valorem* duty of 2*l.* had been charged on the transfer, and afterwards the fee had been conveyed as a further security for the whole sum of 350*l.*, in which case a common deed stamp only would have been required."

Thus it will be perceived that it is clearly established by the above case, that on a simple transfer of mortgage, where a further sum is advanced, the only stamp duty payable, is the *ad valorem* mortgage duty on the additional sum, with progressive duties, if required, of 20*s.* each.

In a subsequent case of *Doe dem. Barnes* v. *Rowe* (*k*), the same point as in *Doe* v. *Gray* was, again, raised, where it was determined, with reference to the previous decision, that a transfer of mortgage with a further sum advanced of 4000*l.* was sufficiently stamped with the *ad valorem* duty on that sum, without a transfer stamp.

Transfer of mortgage where the first mortgagee does not execute.

The circumstance of the first mortgagee not executing the deed, where he is paid off, and a further sum is added, seems to make no difference. In *Doe dem. Snell* v *Tom* (*l*), a mortgage in fee was made for securing 150*l.*, which was paid off, and a further sum of 70*l.* advanced; and by lease and release the mortgage was transferred, or purported to be, the release being stamped for the 70*l.* only; but the conveyance never having been executed by the first mortgagee it was objected that it was a fresh mortgage; but

(*k*) 4 Bing. N. C. 737; 1 Arn. 279.

(*l*) 12 L. J. R. (N. S.) Q. B. 264; 3 Gale & D. 637.

the Court thought that it could not be fairly said to operate as a fresh mortgage; that it amounted to a further charge only, and came under the same rule as if the mortgagee had executed.

Progressive duties on transfer of mortgage.

It is understood to have been said, that, in cases of the foregoing description, no progressive duty can be payable, because none is imposed by the 3 Geo. IV. c. 117, where a further advance is made. This view is, altogether, erroneous. It was not necessary that progressive duties should be, expressly, mentioned, to make them payable in any such case; nor was it even required that *ad valorem* duty should be alluded to, in order to render a further charge subject to it; it is not, indeed, mentioned for that purpose; the clause imposes no duty on the instrument, as regards the further advance; it is, in this respect, declaratory merely; the corresponding clause in the 55 Geo. III. c. 184, thereby repealed, having, in some cases, made the *ad valorem* duty payable over again on the original sum. The instrument, in the case of a further advance, whether there be a transfer, also, or not, is still chargeable with duty, as a *mortgage* or *further charge*, under the 55 Geo. III., including, as a matter of course, progressive duties, where the quantity of words requires them. There needed no exposition of the law to make this clear; but it may be observed, that from the whole tenor of the judgment in *Doe* v. *Gray*, it is assumed that progressive duties were payable.

Further advance and additional security for former sum.

Where, on a further advance, other property is brought in, and made a security for the original sum also, a deed stamp is necessary, in addition to the *ad valorem* duty on the further sum. This was decided in *Lant* v. *Peace* (*m*), which case it will be proper to mention in this place, although the point did not arise on a transfer of mortgage. By indenture made in 1834 the defendant and another person mortgaged certain premises to one *Wm. Lant*, to secure 400*l.* In 1836, *Lant* transferred the mortgage to the plaintiff, *Mary Lant*. In 1837, the defendant borrowed 1000*l.* more of the plaintiff, and as a security for that sum, and also as an *additional security for the* 400*l.*, conveyed to her certain *other* property. The stamps on the deed were 5*l.*, the *ad valorem* duty on the 1000*l.*, 1*l.* 15*s.* in respect of the further security for the 400*l.*, and three progressive duties of 20*s.* each; but the progressive duties were not sufficient for the quantity of words, and it was, therefore, sought to make up the deficiency out of the 1*l.* 15*s.* stamp, insisting that that stamp was unnecessary for any other

(*m*) 8 Ad. & E. 248; W. W. & H. 271.

purpose. The Court, however, held that the 1*l.* 15*s.* stamp was required for the further security for the original sum.

Thus *Lant* v. *Peace*, established a point upon which the Stamp Office had long insisted, as one upon which no reasonable doubt could exist.

Where the original mortgage is by demise, and on a transfer the fee is conveyed.

It still remained to be determined whether, in case the first mortgage had been by demise, and by the second instrument the fee in the same premises was conveyed, and made a security for both the original sum and the further advance, the common deed stamp was requisite. It will be recollected that this was the case in *Doe* v. *Gray*, but the point was left undisposed of, Lord *Denman* alluding to it, both with reference to a transfer of mortgage, where a further sum was advanced, under the 3 Geo. IV. c. 117, and to the case of a second mortgage merely, under the 55 Geo. III. c. 184; observing, that it was not material to inquire into it, because the 1*l.* 15*s.* stamp, erroneously put on for the transfer, was sufficient to cover the common deed stamp, if necessary; although it would, certainly, seem, that, in a subsequent part of the judgment, the question was, in effect, if not in terms, decided in the affirmative. It was, however, afterwards, expressly determined in *Brown* v. *Pegg* (*n*), in which the common deed duty was held to be payable.

The case of *Brown* v. *Pegg* was as follows:—The action was brought on a covenant contained in a deed of the 18th April, 1840. The deed recited two mortgages of certain premises for a term of 1000 years, made by the defendant for securing three several sums of 50*l.*, which had been called in; and that the plaintiffs had agreed to lend the defendant 165*l.*: and, in consideration of 150*l.* to the mortgagees of the term, and of 15*l.* to the defendant, the latter, in pursuance of a power, for that purpose, contained in a certain other deed, appointed that the premises should continue, and be to the use of the plaintiffs, their heirs and assigns for ever; with a proviso for redemption, and a covenant to pay the 165*l.* By the same deed the former mortgagees, in consideration of the 150*l.* paid to them, assigned the term to a trustee for the plaintiffs, for better securing the money advanced by them, and to attend the inheritance. The deed was stamped with 1*l.* *ad valorem* duty, in respect of the further sum advanced, and proper progressive duties; but it was insisted that, in reference

(*n*) 13 L. J. R. (N. S.) Q. B. 270; 8 Jurist, 955; 6 A. & E. 1; see also, *Doe dem. Simpson* v. *Johns*, 5 Law Times, 52.

to *Lant* v. *Peace*, it should have had a common deed stamp, also. The learned Judge admitted the deed, and a verdict was returned for the plaintiff, but with leave for the defendant to move to enter a nonsuit. On motion being made accordingly the Court held that the deed stamp was necessary.

This last case gave rise to much observation, many practitioners expressing great surprise at the decision. It does not appear, however, to be open to any well-founded objection. The point had been previously, at all times, one of doubt in the minds of the profession, as was evident from the frequent solicitation of an opinion upon it at the Stamp Office.

The decision seems to have occasioned not surprise, only, but, also, alarm as to the uncertainty of the extent to which the principle of further security was to be carried; the question commonly asked being, whether a power of sale in the deed of transfer, or a new covenant for payment of the original mortgage money was to be considered an additional security, in the case of a transfer with a further advance, so as to involve the payment of the common deed stamp. These points have, likewise, been since disposed of; but in a way contrary to the general opinion, and in a measure, to that, previously, entertained by the writer.

New covenant by heir at law of mortgagor, and power of sale.

The case of *Humberstone* v. *Jones* (*o*) was an action on a covenant, contained in a transfer of mortgage, for payment of the principal and interest. The original mortgage, in 1773, was for 400*l.*, increased by further charges to 1000*l.* The plaintiff agreed to pay off this latter sum, and advance to the heir at law of the mortgagor 1723*l.* more; and the mortgaged property was, by indenture, in 1837, conveyed to the plaintiff in fee, subject to a proviso for redemption on payment of the aggregate amount; the defendant, the heir at law of the mortgagor, covenanting to pay to the plaintiff the whole sum advanced by him; the deed also contained a power of sale, which was not in any of the prior deeds. The indenture was stamped only with 6*l.*, the *ad valorem* duty on 1723*l.*, which was objected to as insufficient; but the deed was admitted, and a verdict taken for the plaintiff, with leave to move to enter a nonsuit. On arguing the rule for a nonsuit, the Judges were, all, of opinion, that the covenant was not such an additional security for the 1000*l.*, previously due, as rendered any further stamp duty necessary; but they took time to consider as to the power of sale. On subsequently giving judgment, however, Mr. Baron *Parke* stated that

(*o*) 11 Jur. 337; 16 L. J. R. (N. S.) Exch. 292; 16 M. & W. 763.

they had thought fit to alter their opinion. His Lordship said, "This is not a transfer from the first mortgagee to the plaintiff, giving him only the same security which he had, and the same right to the land conveyed; but here is a fresh covenant from the defendant to the plaintiff, to pay, at different times, the original demand of 1000*l.*, as well as the subsequent advance of 1723*l.*; and here is, also, a power to raise the former, as well as the latter sum, by sale of the estate; the deed, therefore contains more than a transfer of the old mortgage, and the advance of a further sum; and, consequently, requires a further stamp than the *ad valorem* on the new advance."

New covenant by devisees of mortgagor.

This case was soon followed by that of *Doe dem. Crawley* v. *Gutteridge* (*p*). By indenture dated 25 Sept. 1838, *Jos. Gutteridge* granted the property in question to *E. L. Brickwood* for 1000 years, by way of mortgage, to secure 150*l.* The mortgagor, by his will, devised the mortgaged premises to his wife, the defendant, for life, with remainder to his son, *Joseph Gutteridge*, in fee. By indenture dated 7th Sept. 1844, between *E. L. Brickwood* of the first part, the defendant of the second part, *Joseph Gutteridge*, the son, of the third part, and *Elizabeth Crawley*, the lessor of the plaintiff, of the fourth part, in consideration of 165*l.* by *Crawley* paid to *Brickwood*, in satisfaction of the principal and interest due to her, and a sum of 185*l.* advanced to the defendant and her son, *Joseph Gutteridge*, the premises were assigned and confirmed to *Crawley*, for the remainder of the term, subject to a proviso for redemption, by the defendant and *John Gutteridge*, on payment of 350*l.*, and interest. Both the latter persons covenanted for payment of such principal sum and interest. The deed consisted of upwards of 45 folios, and required, therefore, two progressive duties of 1*l.* each. The stamps impressed upon it were 4*l.* and 1*l.*, which duties, it was contended, were more than sufficient, the *ad valorem* duty on the additional sum advanced being only 2*l.*; but it was insisted that, besides the *ad valorem* and progressive duties, the common deed duty of 1*l.* 15*s.* was, also, requisite; and the Court was of this opinion.

It will be observed that the Court did not say, in *Humberstone* v. *Jones*, what the deficiency in the stamp duty was; but in *Doe* v. *Crawley* it was, expressly determined, that the common deed duty of 1*l.* 15*s.* was required, in addition to the *ad valorem* duty on the further advance; and there needs no argument to show, that

(*p*) 12 Jur. 51; 17 L. J. R. (N. S.) Q. B. 99.

the same amount of duty was referred to in both cases; and that *ad valorem* duty on the original sum was not, as surmised by some persons, referred to in one case more than the other. Neither a covenant nor a power of sale is a mortgage, or other instrument coming within the description of any of those charged with *ad valorem* duty.

These two cases are, in the leading facts, parallel; but the terms of the judgment, in the first case, are more general, and are far more comprehensive in their operation, than in the other. In neither instance was the further security, for the sum previously due, given by the original mortgagor himself; but, in one, by his heir at law, and, in the other, by the devisees. In the latter the judgment would appear to proceed, in a measure, at least, on the ground that the covenantors had, by their covenant, made themselves personally answerable for the original sum, for which they were, before, bound only *sub modo;* there is no such qualification to be found in the previous case. It is true that there was, in that case, not a covenant, merely, but, also, a power of sale, which power was not in the original mortgage; but it is certain, from the tenor of the judgment, that if either of these incidents alone, had arisen, the result would have been the same. The consequence, therefore, of these two judgments, or rather, it may be said, of that in *Humberstone* v. *Jones*, is, that in every case of a transfer of mortgage, in which is contained a covenant by the mortgagor, or by any other person, for payment to the transferee of the money already charged thereon, there must be a stamp duty of 1*l.* 15*s.* paid, besides the *ad valorem* duty on the further sum advanced, where there is any, or besides the transfer stamp of 1*l.* 15*s.* where there is no further advance; and in addition, also, to any progressive duties that may be required, and the duty chargeable in lieu of that on a bargain and sale, where the deed is to have the effect of a lease and release.

New covenant by original mortgagor.

Upon whatever grounds the decisions might have been based, or may be properly maintained, there is no doubt as to the practical result; and the following general propositions may now be laid down.

PROPOSITIONS.

1. A transfer of mortgage, where a further sum is advanced, the covenant for payment being limited to such sum and interest, is chargeable with no other duty than the *ad valorem* duty on the further advance, and progressive duties of 20*s.* each.

Transfer with further advance.

2. In the case of a transfer of mortgage, where no additional

Transfer with

further security.

sum is advanced, but a further security, or something in the nature of it, is given for the money due, whether such security, or *quasi* security, consists of other property, or of an enlarged estate in the same property, or of a power of sale not in the original mortgage, or a mere covenant by the mortgagor, or other person, with the transferee, for payment of the money, the duties payable are, 1*l.* 15*s.* in respect of the transfer, the like for the further security, and progressive duties of 1*l.* 5*s.* each.

Further advance and further security.

3. Where a further sum is advanced, whether on the occasion of a transfer or not, and additional security is given, as in the last proposition, the proper stamps will be, the *ad valorem* duty on the further sum, and a common deed duty of 1*l.* 15*s.* in respect of the additional security, with progressive duties of 1*l.* each.

These duties, in any of such cases, are independent of any duty that may attach, in lieu of that, as for a bargain and sale, or lease for a year, where the effect of a lease and release is required to be given to the deed. It may be doubted whether this latter duty can, in any of the cases, be less than 1*l.* 15*s.*; at all events, it can scarcely be advisable to use a lower stamp.

There seems nothing extraordinary in the proposition, that, on a transfer with a further advance, a 1*l.* 15*s.* stamp should be required, besides the *ad valorem* on the additional sum; it is consistent with the general notion entertained before the decision in *Doe* v. *Gray*, although the stamp then supposed to attach was, specifically, that on the transfer; but it is somewhat startling to discover that on a mere transfer of mortgage in fee, however inconsiderable the sum charged may be, in which the mortgagor joins, and covenants to pay the money, there should be payable three several duties of 1*l.* 15*s.*, *viz.*: one for the transfer, another in respect of the covenant, and a third in lieu of a lease for a year; in addition to progressive duties; and yet such is the result of the judgment in *Humberstone* v. *Jones;* and, therefore, it may be said, that there can be no instance of a transfer (the mortgagor, in practice, always, in fact, joining, and covenanting to pay,) without, at least, two of such duties of 1*l.* 15*s.* attaching, or, where there is a further advance, one of them, and *ad valorem* duty.

Except in reference to a general principle, it is, perhaps, scarcely necessary to stop to inquire, upon what grounds a covenant by the mortgagor with the transferee, or a power of sale, has been held to require the payment of a duty under the head of "DEED OF ANY KIND WHATEVER, NOT OTHERWISE CHARGED," seeing that a

transfer of mortgage is otherwise charged, but it may be observed, that it can only, properly, be, by reference to the principle upon which the Courts of law, in the absence of any express enactment, have, from the first imposition of stamp duties, held instruments to be liable to several duties where such instruments have, in certain cases, embraced several distinct matters A deed referrible to the general head alluded to may, perhaps, in some cases, be liable to one duty, only, however multifarious it may be, yet, if, by reason of any special matter, it is chargeable under a particular head, whether "Conveyance," "Mortgage," "Lease," or any other, it will be chargeable, also, under the general head, if it relate to any foreign and totally distinct subject, not incidental or accessory to such special matter (*q*)

The exemptions from *ad valorem* duty on mortgages, in the schedule to the general Stamp Act, have, perhaps, on some occasions, been, somewhat inaptly, alluded to, as tending, by reference to the heading of the exemptions, to indicate this liability to the common duty These exemptions, of course, only refer to instruments that would, but for such exemptions, be chargeable, as mortgages or further charges, with *ad valorem* duty In *Doe* v *Gray*, *Lant* v *Peace*, and *Brown* v *Pegg*, further property, or a further estate in the same property, was pledged to secure the money previously due, and, therefore, the instrument was, in each case, a mortgage for that amount, as well as for the further advance, and in the absence of any exemption would have been chargeable with *ad valorem* duty, but neither in *Humberstone* v *Jones* nor in *Doe* v *Crawley* was the deed a mortgage, and the exemptions, therefore, had no reference to it (*r*)

The case of *Doe dem Bowman* v *Lewis* (*s*), although it fails, by reason of a reference to the repealed, instead of the present duties, as an authority upon any point connected with the subject treated

(*q*) See "INSTRUMENTS," p 348

(*r*) Where, as in *Humberstone* v *Jones*, and *Doe* v *Crawley*, on the transfer of a mortgage any other person than the original mortgagor covenants to pay the money previously secured there would seem to be little room for doubting at any time that a common deed duty was payable, in addition to the transfer duty, but, inasmuch as the opinion unreservedly expressed at the Stamp Office and inculcated by the former edition of this work, was, that no such duty was required by reason of a power of sale being introduced, or the covenant of the original mortgagor, the Commissioners under a general authority obtained from the Treasury, in all such cases return the penalty payable on impressing the stamp on deeds executed prior to the report of the decision in *Humberstone* v *Jones*

(*s*) 13 M & W 241, 13 L J R (N S) Exch 200

of under the present division, it would not be right to pass by without notice; the facts are not distinctly reported, the omission however may be readily supplied.

It appears that a mortgage of certain premises was made to one *Owens* for 140*l.*; and another of certain other premises to one *Parry*, for 3200*l.*; the one being by demise, for 1000 years, the other in fee; an outstanding term being assigned, in the latter case, for better securing the money, and to attend the inheritance. The mortgages were paid off by *Hannah Bowman*, to whom they were assigned by a deed which, also, contained a conveyance of all the premises to her for securing a gross sum of 7700*l.* including the sums of 140*l.* and 3200*l.* The case, therefore, would seem to have been that of *Doe* v. *Gray*, (so far as the latter was decided,) a mere transfer of mortgage with a further advance, and, therefore, on the authority of that case, would have been sufficiently stamped with an *ad valorem* duty of 9*l.*, on the further sum; but it was treated by the parties as an original mortgage, and was stamped with 12*l.* It was contended, that, as it contained an assignment of *Owens's* mortgage, it should have had a 1*l.* 15*s.* stamp, also. The term, to attend the inheritance, was assigned by a separate deed for better securing the 7700*l.*; and it was, likewise, contended that this deed should have had an *ad valorem* stamp. But the Court, on motion, held that there was no ground for the objection. Mr. Baron *Parke* observed: "When an *ad valorem* is paid on a conveyance, an assignment stamp, *plus* the *ad valorem* duty, is not necessary, merely because, by the conveyance, certain terms happen to be assigned. This is not the case of a transfer, or assignment of a mortgage, '*where the person entitled to the right of redemption, or reversion, shall not be made a party to such transfer, or assignment, provided no further sum of money or stock be added to the principal money or stock already secured;*' it falls within the subsequent clause, '*in all other cases, such transfer or assignment, disposition or assignation, shall be charged with the same duty, or duties, as the original mortgage;*' no additional duty is, therefore, payable. With regard to the term, 1*l.* 15*s.* only was necessary; the words of the statute are, '*where the purchase or consideration money therein, or thereupon expressed, shall not amount to,*' &c.; here the consideration is 10*s.*" Mr. Baron *Alderson* was of the same opinion; adding, that in order to ascertain the duty, the sum in respect of which the transfer takes place must be looked at, which was 7700*l.*

Mr. Baron *Parke* was, unquestionably, correct in the two points

decided with reference to the general principles of the stamp laws; although the words quoted by him, in regard to the deed assigning the term, are to be found under the head "CONVEYANCE UPON SALE," and can have nothing to do with the case of a mortgage; still the inference was perfectly right that the stamp duty depends on the contents of the deed, and, in a case of sale, on the consideration *expressed* in the deed. But it is to be regretted that his Lordship was permitted to refer to the duties on transfers of mortgage under the 55 Geo. III. c. 184, instead of the 3 Geo. IV. c. 117.

It is not easy, however, to discover the real point contended for in this case. The deed would appear to have been stamped under the 55 Geo. III. c. 184, as a transfer of mortgage, where the party originally making the mortgage continued entitled to the right of redemption, and was made a party, a further sum being added; in which case, it was made liable, by that Act, to duty as an original mortgage; and it must have been insisted, that because of there being two mortgages, of distinct properties, an additional stamp of 35*s*. was necessary; or else the point raised must have been the same as in *Doe* v. *Gray*, and it must have been contended that a stamp of 35*s*. was required for the transfer of each mortgage, besides the *ad valorem* on the further advance, in which case the duty would have been insufficient by 5*s*. There could, however, have been, really, no pretence for the objection; the duties imposed by the 55 Geo. III. c. 184, on transfers of mortgage being wholly repealed, the deed was liable under the 3 Geo. IV. c. 117, and the raising of any point, which should resolve itself into the same question as that in *Doe* v. *Gray*, was worse than useless.

Had this been the case of a transfer of the mortgages, merely, and one stamp of 35*s*., only, had been impressed, no doubt it would have been open to objection; there must in that instance have been a stamp for each transfer. And this leads to the notice of a point upon which mistakes are occasionally made, and against which it may be useful to give a caution. In the cases of transfer of mortgage with a further advance, the deed may with safety be treated as an original mortgage for the whole amount, as the payment of a higher duty than necessary is involved by it; but where the deed is, simply, a transfer of mortgage this cannot be done, unless the *ad valorem* and progressive duties exceed the transfer duty of 35*s*. and the progressives of 25*s*.; a clear distinction being taken between a mortgage, and a transfer of mortgage, and a specific duty imposed upon the latter, which the parties cannot forego

A transfer of mortgage cannot be treated as an original mortgage in every instance.

in favour of a lesser duty. A deed which is, in fact, a transfer of mortgage, and chargeable as such with 35*s.*, cannot be designated, at the election of the parties, an original mortgage, subject, only, to an *ad valorem* duty of 30*s.* where the sum secured does not exceed 100*l.*

Evidence of recitals.

Without entering at all into the question as to the evidence of recitals in a deed, it may be observed that the amount of the stamp duty, impressed on the deed, can have no effect, whatever, in the argument on such a point; in discussing a question of the kind, the deed should be considered without regard to the laws imposing stamp duties, and as if no such duties were in existence; but, on the other hand, the recitals in a deed, may, so far as such duties are concerned, give it a character by which the duties may be controlled; and as, in general, the stamp duty depends on the contents of the instrument and not on extrinsic evidence, the recitals, as well as the operative part, must be referred to. This is stated as a general proposition, merely, and upon the presumption of the total absence of fraud.

Doe dem. Rogers v. *Brooks* (*t*), does not seem to have been determined with reference to the stamp duties. The recital in a transfer of mortgage of the granting of the original mortgage was held to be evidence of the fact, without producing the former deed.

In *Doe dem. Brame* v. *Maple* (*u*), to prove the title of the lessor of the plaintiff, as mortgagee, an assignment of a mortgage, stamped with 35*s.*, was produced; it was objected that the recital of the original mortgage could not, as against the defendant, a stranger, be taken as evidence of the seisin of the mortgagor at the time of the mortgage; that the deed, therefore, ought to be considered not as an assignment but as an original mortgage, subject to *ad valorem* duty; and an attempt was made to distinguish the case from that of *Doe* v. *Brooks*, where the seisin of the mortgagee was proved; but the Court held the stamp sufficient for the instrument.

See "Bonds;" also, as to the effect of recitals regarding the Stamp Duty, page 208, *ante*.

Turnpike and paving bonds.

What are usually termed turnpike bonds, paving bonds, debentures, and such like, by which the tolls and rates are pledged by way of security for the money advanced, are, in fact, mortgages, and the indorsements or other instruments by which they are assigned, are, therefore, transfers of mortgages, and chargeable, as

(*t*) 3 A. & E. 513; 1 H. & W. 400.

(*u*) 3 Bing. N. C. 833; 3 Hodges, 213.

such, with the 1*l.* 15*s.* duty. See *Rex* v. *Bates* (*x*), in which, paving bonds given by the vestry of Marylebone, and by which the vestry professed to assign the rates, under the authority of a local Act, were held to create an interest in land.

Transfer of mortgage for less than due.

The assignment of a mortgage, on the payment of a less sum than that due, raises a point of some doubt, as to the stamp. In such cases the character of the transaction is that of a sale, and the transfer becomes a conveyance, upon sale, in consideration of the money paid; at the same time, it cannot be denied, that it is a transfer of mortgage. It may, perhaps, be said, that, in equity, it amounts to no more than the sale of a debt, and is, therefore, within the case of *Warren* v. *Howe*, supposing that case to be an authority; it is certain, however, that an interest in land is dealt with, and transferred. Whatever may be the correct view, in such a case, there can, scarcely, be a doubt where the transfer is, itself, intended only as a security, and is subject to redemption; it seems not to admit of a question that the transfer is, in that case, substantively, a mortgage.

As to the sale of the equity of redemption in certain cases, see "CONVEYANCE," page 230, *ante*.

(*x*) 3 Price, 341.

Newspapers.

10 Anne, c. 19.	34 Geo. III. c. 72.
11 Geo. I. c. 8.	37 Geo. III. c. 90.
16 Geo. II. c. 26.	38 Geo. III. c. 78.
30 Geo. II. c. 19.	41 Geo. III. c. 10.
5 Geo. III. c. 46.	44 Geo. III. c. 98.
13 Geo. III. c. 65.	49 Geo. III. c. 50.
16 Geo. III. c. 34.	55 Geo. III. c. 185.
29 Geo. III. c. 50.	

The above-mentioned Acts imposed stamp duties on, or contained enactments relating to "newspapers, or papers containing public news, intelligence, or occurrences, printed in Great Britain to be dispersed and made public;" all which duties and provisions have been since repealed.

38 Geo III. c. 78.

Sect. 1 —No person to print or publish any newspaper until an affidavit be delivered to the Commissioners of Stamps, or to some of their officers containing the matters hereinafter specified

Sect. 2 —Every such affidavit to contain the names, &c., of the printers and publishers, and of the proprietors therein mentioned, of such newspaper, and of the place of printing the same.

Affidavits to be filed, and be evidence.

Sect. 9.—All such affidavits to be filed and kept as the Commissioners direct, and the same or certified copies thereof, in all proceedings, civil and criminal, touching any newspaper mentioned in any such affidavit, or touching any publication, matter, or thing contained in any such newspaper, to be admitted as evidence of the truth of the matters set forth therein

Particulars to be on newspapers.

Sect 10 —In some part of every newspaper to be printed the true and real names, additions, and places of abode of the printer and publisher of the same, and also a true description of the place where the same is printed.

When proof of purchase of paper not required.

Sect. 11 —It shall not be necessary, after any such affidavit, or a certified copy thereof, shall have been produced in evidence against the persons therein named, and after a newspaper shall be produced in evidence, intituled in the same manner as the newspaper mentioned in such affidavit or copy, and wherein the names of the printer and publisher, and the place of printing shall be the same as the names of the printer and publisher and the place of printing mentioned in such affidavit, for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this Act, to prove that the newspaper to which such trial relates was purchased at any house, shop, or office belonging to or occupied by the defendant, or by his servants or workmen, or where he usually carries on the business of printing or publishing such paper, or where the same is usually sold.

Sect 14 —In all cases a copy of any such affidavit, certified to be a true copy under the hand of one of the said Commissioners or officers, shall, upon proof made that such certificates have been signed with the handwriting of the person making the same, and whom it shall not be necessary to prove to be a Commissioner, or officer, be received in evidence as proof of such affidavit, and that the same was duly sworn, and of the contents, and such copies shall also be received as evidence that the affidavits have been sworn according to this Act, and shall have the same effect for the purposes of evidence, as if the original affidavits had been produced, and proved

Certified copies of affidavits

Sect. 17 —The printer or publisher to deliver to the Commissioners or their officer papers signed with his name and place of abode, the same to be kept as the Commissioners shall direct, and be produced in evidence in any proceeding

Copies of newspapers to be delivered

NOTE —This Act was wholly repealed by the 6 & 7 Will IV. c 76, but so much of it is shortly set forth as is alluded to in any subsequent Act, or in reported cases of any authority in reference to the present law

60 Geo III c 9.

An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels

Sect 1 —All pamphlets and papers containing any public news, intelligence or occurrences, or any remarks or observations thereon, or upon any matter in Church or State, printed in any part of the United Kingdom for sale, and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such pamphlets or papers, parts or numbers, where any of the said pamphlets or papers, parts or numbers respectively, shall not exceed two sheets, or shall be published for sale for a less sum than sixpence, exclusive of the duty by this Act imposed thereon, to be deemed and taken to be newspapers within the true intent and meaning of the 38 Geo III c 78, 55 Geo III c. 80, (Ireland), 55 Geo III c 185, and 56 Geo III c 56, (Ireland), and all other Acts of Parliament in force relating to newspapers, and be subject to the same duties, rules, regulations, &c, as are contained in the Acts relating to newspapers in the United Kingdom

Certain pamphlets and papers to be newspapers

Sect 2 —No quantity of paper less than twenty-one inches in length, and seventeen in breadth, to be deemed a sheet

Sect 3 —No cover or blank leaf, or any other leaf upon which any advertisement is printed to be deemed to be a part of any such pamphlet, &c

Sect 4 —All pamphlets and papers containing any public news, intelligence, or occurrences, or any such remarks or observations as aforesaid, printed for sale, and published periodically, or in parts or numbers, at intervals exceeding twenty-six days, and which shall not exceed two sheets, or which shall be published for sale at a less price than sixpence, shall be first published on the first day of every calendar month, or within two days before or after that day, and at no other time, and any person first publishing or causing to be published any such pamphlet, paper, part or number aforesaid, on any other day or time, to forfeit 20*l*

When monthly publications to be published

Sect. 5 —Upon every pamphlet or paper containing any public news, intelligence or occurrences, or any remarks or observations thereon, or upon any matter in Church or State, printed in the United Kingdom for sale, and published periodically, or in parts or numbers, at intervals not exceeding twenty-six days, and upon every part or number thereof, shall be printed the full

The price and day of publication to be printed.

price at which it shall be published for sale, and also the day on which the same is first published, and if any person publish any such pamphlet, paper, part or number, without the said price and day being printed thereon, or, at any time within two months after the day of publication printed thereon, sell or expose to sale any such pamphlet, &c, or any portion or part thereof, upon which the price so printed shall be sixpence, or above, for a less price than sixpence, such person shall forfeit 20*l*

Sect 6 —Provided—Not to subject any person to any penalty for any allowance in price made to any bookseller or distributor, or other person to whom the same shall be sold for the purpose of retailing the same

Sect 7 —All pamphlets and papers by this Act declared to be subject to the stamp duties upon newspapers, to be freed and discharged from all the stamp duties and regulations contained in any Act of Parliament relating to pamphlets

NOTE —All such duties and regulations since repealed

Security against libels

Sect 8 —No person to print or publish for sale, any newspaper, or any pamphlet or other paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or upon any matter in Church or State which shall not exceed two sheets, or which shall be published for sale at a less price than sixpence, until he shall have entered into a recognizance before a Baron of the Exchequer, in England, Scotland, or Ireland respectively, as the case may be, if such newspaper or pamphlet, or other paper aforesaid, shall be printed in London or Westminster, or in Edinburgh or Dublin, or shall have executed in the presence of, and delivered to some Justice of the peace for the county, city, or place where such newspaper, &c, shall be printed, if elsewhere, a bond to his Majesty, his heirs and successors, together with two or three sufficient sureties, to the satisfaction of the Baron, or Justice, such printer or publisher in 300*l* if the paper be printed in London or within twenty miles, and in 200*l* if printed elsewhere in the United Kingdom, and his sureties in a like sum, conditioned that such printer or publisher shall pay every such fine or penalty as may at any time be imposed upon or adjudged against him or her, by reason of any conviction for printing or publishing any blasphemous or seditious libel, and every person who shall print or first publish any such newspaper, &c, without having entered into such recognizance, or executed and delivered such bond with such sureties as aforesaid, shall forfeit 20*l*

Penalty

NOTE —The amount of security is increased and the condition extended to private libels by 1 Will IV c 73

Fresh securities in certain cases

Sect 9 —Provided that in every case in which any surety shall have paid the whole or any part of the sum for which he shall have become surety, or in case any such surety shall become bankrupt, or be discharged under any Insolvent Act, the person for whom such surety shall have been bound, shall not print or publish any newspaper, &c, until he shall, upon being required so to do by the Commissioners of Stamps, have entered into a new recognizance or bond, with sureties, under a penalty of 20*l*

Sureties may withdraw

Sect 10 —Provided—If any surety shall be desirous of withdrawing from such recognizance or bond, he may do so upon giving twenty days' notice in writing to the said Commissioners, or to the distributor of stamps for the district, and also to such printer or publisher, and in any such case, he shall not be liable except for any penalty before that time imposed or incurred, and the person for whom such surety shall have been bound, shall not print or publish any newspaper, &c., until he shall have entered into a new recognizance or bond, in the manner aforesaid, under a penalty of 20*l*

New securities to be given

Sect 11 —No such bond to be liable to stamp duty

Bonds and lists of recognizances to be

Sect 12 —Lists of all the recognizances entered into four times in each year, to be transmitted to the said Commissioners by the respective officers recording the same, and all such bonds, within ten days at the furthest after the

execution thereof to be transmitted to the said Commissioners by the Justices to whom the same shall have been delivered

sent to Commissioners

Sect 13 —Reciting that the printer or publisher of a paper to be deemed a newspaper, would be bound to deliver to the Commissioners or some officer one of such newspapers, &c , signed and that it was expedient that similar regulations should be applied to all papers whether periodical or not, which should contain news, &c , and which should not exceed two sheets, or should be published for less than sixpence , it is enacted that the printer or publisher of any pamphlet or other paper for sale, containing any public news, intelligence, or occurrences, or any remarks or observations thereon, or on any matter in Church or State, shall, upon every day upon which the same shall be published, or within six days after, deliver to the Commissioners, at their head office, or to some distributor or officer to be appointed to receive the same, one of the pamphlets or papers so published, signed by the printer or publisher, in his handwriting, with his name and place of abode , the same to be carefully kept as the Commissioners shall direct , and such printer or publisher to be entitled to the amount of the retail price of such pamphlet or paper so delivered , and in case of any neglect such printer and publisher respectively to forfeit 100*l*

Signed copies of papers, though not periodicals, to be delivered.

Sect 14 —Provided—The Commissioners, or officer, refusing to receive or pay for any copy, on account of the same not being within the Act, to give a certificate that a copy had been offered , the party to be freed from the penalty

Where refused to be received

Sect 15 —If any person shall sell or expose to sale any pamphlet or other paper not being duly stamped, if required to be stamped, such person shall, for every such offence, forfeit the sum of 20*l* —See other provision in 6 & 7 Will. IV c 76 s 17

Selling unstamped papers

Sect 17 —The penalties to be recovered in any Court of record at Westminster or Dublin, or the Courts of Great Session in Wales or of the counties palatine, or in the Court of Session or Exchequer in Scotland, or before any two Justices of the peace provided that no larger amount in the whole than 100*l* shall be recoverable before any Justices for any such penalties incurred in any one day

Recovery of penalties

Sect 18 —Any two or more Justices of the peace, authorized to hear and determine any offence against this Act, upon information or complaint within three months after any such offence committed, may summon the party, and the witnesses , and upon the appearance, or contempt of the party proceed to the examination of the witnesses, and give judgment for the penalties , and in case the penalties be not paid to commit the offender to prison, for any time not exceeding six months, unless such penalties shall be paid , with liberty for the party, on giving security for the penalties and costs, to appeal to the next general or quarter sessions, which may order the appellant to pay costs if the judgment be affirmed , and with power to the respective Justices to mitigate the penalty to any sum not less than one fourth over and above the reasonable costs and charges of the officers or informers

Justices to determine offences

Sect 19 —If any person summoned as a witness neglect or refuse to appear without a reasonable excuse to be allowed of by the Justices, or appearing shall refuse to give evidence, he shall forfeit any sum not exceeding 20*l*, to be levied and paid as other penalties

Witnesses not appearing

Sect 20 —By this section a form of conviction is given

Sect 21 —No order or conviction to be removed by certiorari, advocation, or suspension , and no such writ to supersede execution or other proceedings

Certiorari

Sect 22 —No proceedings to be commenced, &c , for the recovery of any fine, penalty, or forfeiture under this Act except in the name of the Attorney-General for England, or Ireland, or His Majesty's Advocate for Scotland or in the name of the solicitor or some other officer of stamp duties , and any proceedings in the name of any other person to be null and void

Attorney-General, &c , to prosecute

Sect 26 —Provided—Nothing in this Act to extend to Acts of Parliament,

Papers excepted

proclamations, orders of council, forms of prayer and thanksgiving, and Acts of State, ordered to be printed by his Majesty, or his authorized officer, or to any printed votes or other matters by order of either House of Parliament, or to books commonly used in the schools of Great Britain or Ireland, or books or papers containing only matters of devotion, piety or charity, or daily accounts, or bills of goods imported and exported, or warrants or certificates for the delivery of goods, and the weekly bills of mortality, or to papers containing any lists of prices current, or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels, or of any other matter wholly of a commercial nature, provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein or to the printers or publishers of the foregoing matters, or any or either of them

Reprinted works in numbers not chargeable

Sect 27 —Provided also, not to extend to charge any work reprinted and republished in parts or numbers, whether wholly or in an abridged form, provided that the original work shall have been first printed and published two years at the least previously

6 Geo IV c 119

Granting reduced duties on supplements to newspapers Since repealed

1 Will IV c 73.

Securities against libels to be increased in amount, and extended to private libels

Sect 2 —The amount of the recognizances and bonds required by the 60 Geo III c 9, in all cases whenever it is necessary, according to the provisions of the said Act, to enter into any such, to be extended in the case of such recognizances to 400*l* for the principal, and the like for the sureties, and in the case of such bonds to 300*l* for the principal and the like for the sureties, the condition of such new recognizances and bonds, respectively, to extend to the payment of damages and costs to be recovered in actions for libels published in newspapers, pamphlets, and papers of the description mentioned in the said Act, as well as to secure the payment of fines upon convictions therein mentioned All the clauses and provisions in the said Act relating to the recognizances and bonds therein mentioned, to be applicable and extend to such new recognizances and bonds

Sect 3 —If the plaintiff in any action for libel against any editor, conductor, or proprietor of any newspaper, &c, make it appear by affidavit to the Court of Exchequer that he is entitled to have execution against the defendant, but that he cannot obtain satisfaction, the Court may order proceedings to be taken upon the bond or recognizance, as for any fine or penalty

3 & 4 Will IV c 23

Granting reduced duties on advertisements. See "ADVERTISEMENTS."

5 Will IV c 2

Amending the 38 Geo III c. 78 Repealed by the Act next mentioned

6 & 7 Will IV c 76

New duties

Sect 1 —In lieu of the duties by this Act repealed, as after mentioned, (sect 32,) the duties on newspapers specified in the schedule (see TABLE,) to

be payable throughout Great Britain and Ireland; to be under the Commissioners of Stamps and Taxes, who are to provide dies for expressing the duties; and all the powers, provisions, &c., contained in the Acts in force relating to stamp duties, to be of full force and effect with respect to the duties hereby granted, in cases not hereby provided for, and be applied for raising, &c., the said duties, so far as the same are not superseded by and are consistent with this Act.

Provisions of existing Stamp Acts to continue.

Sect. 2.—A discount after the rate of 25*l.* *per cent.* on 10*l.* or upwards for duties, to be allowed on newspapers in Ireland, such discount to be denoted on the face of the stamp: if any newspaper be printed in Great Britain upon paper stamped for denoting such discount, such stamp to be of no avail, and the newspaper to be deemed to be not duly stamped.

Discount in Ireland.

Sect. 3.—In the stamp to be impressed on every newspaper the title of such newspaper, or some part thereof, to be expressed; the Commissioners to cause a proper die for stamping each newspaper to be prepared, and a new die from time to time as they shall think necessary; the reasonable costs and expenses of preparing such dies to be defrayed by the proprietor of such newspaper, and paid to such person as the said Commissioners shall appoint to receive the same, before any paper shall be stamped for such newspaper; and if any newspaper be printed on paper stamped otherwise than as aforesaid the stamp thereon to be of no avail, and such newspaper to be deemed to be not duly stamped.

A separate stamp for each newspaper.

Sect. 4.—Every paper declared by the schedule to be chargeable with the duties to be deemed to be a newspaper within the meaning of this Act and of every Act relating to newspapers, and be subject and liable to all the regulations of this Act; and wheresoever in this or any other Act the word "newspaper" is or may be used, to be deemed and taken to mean and include any and every such paper as aforesaid; and in all proceedings at law or otherwise, and upon all occasions whatsoever, to be sufficient to describe by the word "newspaper" any paper by this Act declared to be a newspaper, without further or otherwise designating or describing the same.

Newspapers subject to the regulations of this Act.

Sect. 5.—Every sheet or piece of paper published as a supplement to any newspaper, except the London Gazette and Dublin Gazette, to be printed with the same title and date as the newspaper, with the addition of the words "supplement to" prefixed; and upon every such newspaper, except as aforesaid, to be printed in conspicuous characters some words clearly indicating that a supplement is published therewith; in default, the publisher for every such sheet or piece of paper so published as a supplement, and for every copy thereof, to forfeit 20*l.*; and if any person sell, deliver out, or in any other manner publish any sheet or piece of paper which shall be or shall purport to be a supplement to any newspaper, without at the same time selling or otherwise publishing and delivering therewith the newspaper to which the same shall be or purport to be a supplement, to forfeit 20*l.*

Particulars to be printed on newspapers with supplements.

Penalty for selling a supplement without the newspaper.

Sect. 6.—No person to print or publish, or cause to be printed or published, any newspaper before there is delivered at the head office for stamps in Westminster, Edinburgh, or Dublin respectively, or to the distributor or other proper officer appointed for the purpose in or for the district within which such newspaper shall be intended to be printed and published, a declaration in writing containing the correct title of the newspaper, the true description of the house or building wherein it is intended to be printed, and also of the house or building wherein it is intended to be published, the true name, addition, and place of abode of every person who is intended to be the printer or to conduct the actual printing, and of every person who is intended to be the publisher thereof, and of every proprietor resident out of the United Kingdom, and also of every proprietor resident in the United Kingdom, if the number of such last-mentioned proprietors (exclusive of the printer and publisher) do not exceed two, and in case it does exceed two, then of such two proprietors resident in the United Kingdom, the amount of whose respective

Declaration to be made.

proportional shares in such newspaper are not less than the proportional share of any other proprietor resident in the United Kingdom, exclusive of the printer and publisher, and the amount of the proportional shares of such proprietors whose names are specified; every such declaration to be made and signed by every person named therein as printer or publisher, and by such of the proprietors named therein as are resident within the United Kingdom; and a declaration of the like import to be made whenever any share is assigned, transferred, divided, or changed by act of the parties or by operation of law, so that the share of any of the persons named as proprietors becomes less than that of any other proprietor exclusive of the printer and publisher, and also whenever any printer, publisher, or proprietor named in the declaration, is changed, or changes his place of abode, and also whenever the title of the newspaper or the printing office or the place of publication is changed, and also whenever the Commissioners, or any authorized officer, require and cause notice in writing to be served upon any person, or left or posted at any place mentioned in the last preceding declaration, as being a printer, publisher, or proprietor, or the place of printing or publishing such newspaper; every such declaration to be made before any one of the Commissioners, or any officer of stamp duties or other person appointed by the said Commissioners, either generally or specially in that behalf; who are respectively authorized to take and receive such declaration; and if any person knowingly and wilfully sign and make any such declaration in which is inserted the name, addition, or place of abode of any person as a proprietor, publisher, printer, or conductor of the actual printing of any newspaper to which such declaration relates, who is not a proprietor, printer, or publisher thereof, or from which is omitted the name, addition, or place of abode of any proprietor, publisher, printer, or conductor of the actual printing of such newspaper, contrary to the true meaning of this Act, or in which any matter or thing by this Act required is set forth otherwise than according to the truth, or from which any matter or thing required is entirely omitted, every such offender to be deemed guilty of a misdemeanour.

Fresh declaration to be made in certain cases.

Before whom to be made.

False declaration.

Penalty for printing, &c., a newspaper before declaration made, 50*l.*

Sect. 7.—If any person knowingly and wilfully print or publish, or cause to be printed or published, or as a proprietor or otherwise sell or deliver out any newspaper relating to which such declaration containing such matters and things as are required by this Act to be therein contained, shall not have been duly signed and made and delivered when and so often as by this Act is required, or any other matter or thing required by this Act to be done or performed shall not have been accordingly done or performed, he shall forfeit for every such act done 50*l.* for every day on which any such newspaper shall be printed or published, sold or delivered out, until such declaration shall be delivered, or such other matter or thing done or performed as by this Act is directed; and every such person shall be disabled from receiving any stamped paper for printing such newspaper until such declaration shall be signed and made and delivered, or until such other matter or thing shall be done and performed.

Declarations to be filed; certified copies to be evidence.

Sect. 8.—Such declarations to be filed and kept as the Commissioners direct; and copies, certified to be true copies, to be admitted in all proceedings, civil and criminal, and upon every occasion whatsoever, touching the newspaper mentioned in such declaration, or any publication, matter, or thing contained therein, as conclusive evidence of the truth of all such matters set forth in such declaration as hereby required, and of their continuance in the same condition down to the time in question, against every person who shall have signed such declaration, unless it be proved that previous to such time such person became lunatic, or that previous to the publication in question such person did duly sign, make, and deliver a declaration that he had ceased to be a printer, publisher, or proprietor, or that a new declaration was delivered respecting the same newspaper, in which the person sought to be affected did not join; and the Commissioners, or the proper authorized officer, upon appli-

Commissioners

cation in writing, to deliver a certified copy to the person applying upon payment of one shilling; and in all proceedings and upon all occasions whatsoever a copy certified to be a true copy under the hand of one of the Commissioners or of any officer in whose possession the same shall be, upon proof made (*a*) that such certificate hath been signed with the handwriting of a person described in such certificate as such Commissioner or officer, and whom it shall not be necessary to prove to be a Commissioner or officer, to be received in evidence against any person named in such declaration as a person making or signing the same as sufficient proof of such declaration, and that the same was duly signed and made according to this Act, and of the contents thereof; and every such copy to have the same effect for the purposes of evidence against any and every such person named, as if the original declaration had been produced and proved to have been signed and made by the person appearing to have signed and made the same; and whenever a certified copy has been produced against any person having made such declaration, and a newspaper is produced intituled in the same manner as the newspaper mentioned in such declaration, and wherein the name of the printer and publisher and the place of printing is the same as in such declaration, or purports to be the same, whether in the same form of words, or in any form varying therefrom, it is not to be necessary for the plaintiff, informant, or prosecutor to prove that the newspaper was purchased of the defendant, or at any house, shop, or office belonging to or occupied by the defendant, or by his servants or workmen, or where he may usually carry on the business of printing or publishing such newspaper, or where the same may be usually sold; and if any person, not being a Commissioner or authorized officer give any such certificate, or if any such Commissioner or officer knowingly and wilfully give any false certificate, to forfeit 100*l.*

to deliver certified copies.

Proof of purchase of paper not necessary.

Sect. 9.—In any suit, prosecution, or proceeding, against any printer, publisher, or proprietor, service at the place mentioned in the declaration as the place at which such newspaper is printed or published, or intended so to be, of any notice or other matter required or directed by this Act, or of any summons, subpœna, rule, order, writ, or process of what nature soever, either to enforce an appearance, or for any other purpose whatsoever, to be good and sufficient service thereof.

Service of legal process, &c.

Sect. 10.—The Commissioners to cause to be entered in a book to be kept at the head office for stamps in Westminster, Edinburgh, and Dublin, the title of every newspaper registered at such office, and also the names of the printers and publishers thereof as in the declarations; all persons to have liberty to inspect the book without payment.

Titles of newspapers, &c., to be entered in a book.

Sect. 11.—No person to print or publish, or cause to be printed or published any newspaper, nor any officer, or vendor of stamps, to sell or deliver any stamped paper for newspapers to the printer or publisher, or to any person on his account, until such printer and publisher, together with the proprietor or such one or more of the proprietors, as in the judgment of the Commissioners or proper officer may be sufficient for the purpose, together also with two sufficient sureties, to be approved of by the said Commissioners or officer, shall have entered into security by bond to his Majesty in such sum as the said Commissioners or officer shall think sufficient for payment of the duties for the advertisements which shall be inserted in such newspaper; and every such bond to be delivered to the proper authorized officer at the respective head offices for stamps; and to be renewed, with sureties, whenever any of the parties shall die, or become bankrupt or insolvent, or reside in parts beyond the sea, and also whenever the Commissioners or any officer authorized in that behalf shall require and shall give notice for that purpose; and every person who shall print or publish, or cause to be printed or published, any newspaper before such bond shall have been entered into and delivered as aforesaid, or

Security to be given for the advertisement duties.

Penalty for neglect, 100*l.*

(*a*) See 8 & 9 Vict. c. 113, s. 1, dispensing with such proof in England and Ireland.

who shall neglect or refuse to renew such bond whenever the same shall be required by or in pursuance of this Act, to forfeit 100*l* for every day on which such newspaper shall be so printed and published before such bond shall have been entered into.

Where affidavits, &c., already made

Sect 12 —Printers, &c , who have made affidavits and given security before the commencement of this Act not required to renew the same, and certified copies to be evidence as in the case of declaration. But if the Commissioners or their officer require it, or there be any change in the proprietorship, &c , as before mentioned, then declarations and bonds to be made and given under the same penalties, &c., as before provided Provided that the printer, publisher, or proprietor of the London Gazette or Dublin Gazette is not to be required to make any declaration, but the printers and publishers to enter into the bonds with sureties for securing the payment of the duties upon the advertisements, and renew the same as the printers and publishers of other newspapers.

London and Dublin Gazettes

Copies of newspapers to be delivered to the Commissioners where printed, in London, Edinburgh, or Dublin

Sect 13 —The printer or publisher of every newspaper printed or published in the city of London, Edinburgh, or Dublin, or within twenty miles, upon every day on which such newspaper shall be published or on the day next following not a holiday, between ten and three, to deliver to the said Commissioners or to the proper authorized officer, at the head office nearest to which such newspaper shall be printed or published, one copy of such newspaper and of every second or other varied edition or impression thereof, with the name and place of abode of the printer or publisher thereof, signed and written thereon after the same shall be printed by his proper hand and in his accustomed manner of signing, or by some person authorized by him for that purpose, and of whose authority notice in writing, signed by such printer or publisher in the presence of and attested by an officer of stamp duties, shall be given to the said Commissioners, or to the officer to whom such copies are to be delivered, and the printer or publisher of every newspaper printed or published in any other place in the United Kingdom, upon every day on which such newspaper shall be published, or within three days, in like manner between ten and three, to deliver to the distributor of stamps or other authorized officer in whose district such newspaper shall be printed or published two copies of every such newspaper, and of every second or other varied edition or impression thereof, with the name and place of abode of the printer or publisher thereof signed and written thereon in manner aforesaid after the same shall be printed, the same copies shall be kept as the said Commissioners shall direct, and such printer or publisher to be entitled to demand, once in every week, the amount of the ordinary price of the newspapers so delivered; and every printer and publisher of such newspaper for every neglect to deliver such copy or copies to forfeit 20*l.*; and in case any person make application in writing, in order that any newspaper so signed may be produced in evidence in any proceeding, the said Commissioners, or distributor or officer, at the expense of the party applying, at any time within two years, either to cause such newspaper to be produced, or deliver the same to the party applying, taking reasonable security, at the expense of such party, for returning the same within a certain period; and in case by reason that such newspaper shall have been previously applied for by any other person the same cannot be produced or delivered, the Commissioners, or such distributor or officer, to cause the same to be produced or deliver the same as soon as they are enabled so to do, and all copies so delivered to be evidence against every printer, publisher, and proprietor of every such newspaper respectively in all proceedings, as well touching such newspaper as any matter or thing therein contained, and touching any other newspaper and any matter or thing therein contained which shall be of the same title, purport, or effect, although such copy may vary in some instances or particulars either as to title, purport, or effect; and every printer, publisher, and proprietor of any copy so delivered to be deemed to be the printer, publisher, and proprietor respectively of all newspapers which shall be of the same title, purport, or effect with such copies

If printed elsewhere

so delivered, notwithstanding such variance, unless he prove that such newspapers were not printed or published by him, nor by nor with his knowledge or privity Provided that if any printer or publisher of any newspaper not printed and published in London, Edinburgh, or Dublin, or within twenty miles, shall find it more convenient to cause copies to be delivered to any other than the distributor in whose district such newspaper shall be published, and shall state such matter by petition to the Commissioners, they may order the same accordingly, and the place of publication of such newspaper for that purpose only to be deemed and taken to be within the district of such other distributor until otherwise ordered by the Commissioners

Printers may be allowed to deliver copies to any distributor

Sect 14 —At the end of every newspaper, and of any and every supplement sheet or piece of paper, to be printed the christian name and surname, addition, and place of abode of the printer and publisher of the same, and also a true description of the house or building wherein the same is actually printed and published respectively, and the day of the week, month, and year on which the same is published; and if any person knowingly and wilfully print or publish, or cause to be printed or published, any newspaper or supplement thereto whereon the several particulars aforesaid shall not be printed, or whereon there shall be printed any false name, addition, place, or day, or any description of the place of printing or publishing different from that mentioned in the declaration, to forfeit 20*l*

Particulars to be printed on newspapers

Sect 15 —No person other than a Commissioner or officer to supply paper stamped for printing newspapers unless he be licensed by the said Commissioners and shall have given security to render accounts of the paper supplied by him, and not to supply any other than a printer, &c, of a newspaper, nor to any such person without receiving from him a certificate that security has been given respecting such newspaper, and the declaration made as required by law, nor to any person with respect to whom notice shall be given that the law has not been complied with, or that the party is disabled from receiving paper, and if any person supply any such stamped paper without having given such security, or if any person who shall obtain stamped paper for printing any newspaper of which he is the printer, &c, supply any other person with stamped paper, or if any person shall use for the printing of any newspaper any stamped paper furnished by any person other than the said Commissioners or their officers, or some person duly authorized, every person so offending to forfeit 50*l*, and in any proceeding for recovery of such penalty in the last-mentioned case it shall lie on the person charged to prove that the paper was obtained by him from the Commissioners or their officers, or from some person duly authorized

None but Commissioners to supply stamps without being licensed.

Printers, &c, of newspaper not to supply other printers

Sect 16 —Every person printing or publishing or being concerned either as proprietor or otherwise in printing or publishing any newspaper upon paper not duly stamped, to be deemed and taken to owe to his Majesty such sums of money as would have accrued in case the same had been printed upon paper duly stamped, and in any proceeding for discovery of the matters aforesaid, and for an account and payment of such sums, the defendant not to plead or demur, but be compellable to make discovery Provided always, such discovery not to be made use of in any proceeding except only in that in which the discovery is made

Persons printing newspapers not duly stamped to be debtors for the duty

Sect 17 —If any person knowingly and wilfully print or publish, or cause to be printed or published, or sell, utter, or expose to sale, or dispose of or distribute, or have in his possession any newspaper not duly stamped according to law, he shall for every such newspaper, and for every copy thereof forfeit 20*l*, and moreover any officer of stamp duties, or any person authorized by the Commissioners may apprehend the offender, and take him before a Justice of the peace, who shall hear and determine the matter in a summary way, and commit the offender to prison for any time not exceeding three calendar months, nor less than one calendar month, unless the penalty or penalties be sooner paid Provided that if the offender be not apprehended,

Penalty for printing, publishing, selling, &c newspapers not duly stamped, 20*l*

then the said penalty or penalties to be recoverable by any other of the ways and means under this Act

Penalty for sending abroad newspapers not duly stamped

Sect 18 —If any person knowingly and wilfully directly or indirectly send or carry, or endeavour to send or carry, or cause or procure to be sent or carried, or do or cause to be done any act whatever for or towards the sending or carrying, or for or towards the causing or procuring to be sent or carried, or with intent that the same should be sent or carried out of any part of the United Kingdom, any newspaper, the same not being duly stamped according to law, he shall forfeit 50*l* And any officer of stamp duties, or any person appointed or authorized by the Commissioners in that behalf, without any other warrant than this Act, may seize and take away all newspapers not duly stamped wheresoever the same shall be found, unless the same be in the possession of some person having the custody thereof by lawful authority, and all newspapers not duly stamped, seized, or taken under any of the provisions of this Act, to be destroyed or otherwise disposed of as the Commissioners direct

Unstamped newspapers may be seized

Discovery of proprietors, &c, may be enforced by bill, &c

Sect 19 —If any person file any bill for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relating to the printing or publishing of any newspaper, in order to any action for damages for any slanderous or libellous matter the defendant to be compellable to make the discovery required Provided that it be not made use of in any proceeding save only in that for which the discovery is made

The duty on advertisements when and where to be paid.

Sect 20 —The printer, publisher, or proprietor of every newspaper, within twenty-eight days after the last day of every calendar month, to pay the duty chargeable on every advertisement contained in or published with such newspaper during the said calendar month to the Receiver General of stamps and taxes, or to the proper officer appointed to receive the same, at the head office for stamps in Westminster, Edinburgh, or Dublin respectively, if such newspaper be printed or published within any of the said cities, or within twenty miles thereof, and if in any other part of the United Kingdom, then to the distributor of stamps in whose district such newspaper shall be printed or published, and if any printer, publisher, or proprietor of any newspaper neglect to pay within ten days next after notice given to him by any officer of stamp duties, after the expiration of the said term of twenty eight days, the duty on any such advertisement, the Commissioners and their officers may, and they are required to refuse to sell or deliver, and also to give notice to and to require any vendor of such stamped paper to refuse to sell or deliver, to or for the use of such printer, publisher or proprietor, any such stamped paper for printing such newspaper thereon until all arrears of advertisement duty be duly paid and discharged up to and for the last day of the month next preceding the month in which such payment is made

Stamped paper may be refused to persons in arrear.

Sect 21 —As to the duties on advertisements in publications not being newspapers, see "ADVERTISEMENTS"

Justices may grant warrants to search for unstamped newspapers

Sect 22 —Upon information given before any Justice upon oath that there is reasonable and probable cause to suspect any person of being or having been at any time within one calendar month in any way knowingly and wilfully engaged or concerned in printing, publishing, vending or otherwise distributing any newspaper not duly stamped, or of being unlawfully possessed of any newspapers not duly stamped, or that any printing press, engine, machine, types, or other implements or utensils for printing is or are or have been knowingly and wilfully used within the time last aforesaid for the purpose of composing or printing any newspaper not duly stamped, or that any such newspapers are sold or distributed, or kept for sale or distribution, or are unlawfully deposited in any place, such justice may and he is hereby required, upon the application of any officer of stamp duties, to grant a warrant to any constable or other peace officer, or any officer of stamp duties, or other person or persons named in such warrant, authorizing and empowering him or them, with such persons as he or they shall call to his or their assistance, to

enter and search in the daytime any house, room shop, warehouse, outhouse, building, or other place belonging to such suspected person, or where such person shall be suspected of being engaged or concerned or of having been engaged or concerned in the commission of any such illegal act as aforesaid, or where any such printing-press, engine, machine, types, implements, or utensils suspected to be or to have been used for any such illegal purpose as aforesaid shall be or be suspected to be, or where any such newspapers as aforesaid are suspected to be sold or distributed or kept or deposited as aforesaid, and if any newspapers not duly stamped, or any printing press, engine, machine, types, implements, or utensils which shall have been used in printing or publishing any such newspaper within the time last aforesaid, shall be found, the persons named in such warrant, and their assistants, may seize and take away the same, together with all other presses, engines, machines, types, implements, utensils, and materials for printing belonging to the same person, or which shall be found in the same house, room, shop, warehouse, outhouse, building, or place, and all such presses, &c, shall be forfeited to the use of his Majesty, and shall be proceeded against to condemnation in the Court of Exchequer in England, Scotland, or Ireland respectively, in like manner as in the case of any goods seized as forfeited for any breach of the laws relating to the Customs or Excise

Constables may break open doors

Sect 23 —Upon the execution of any such warrant, if on demand of admittance and notice of any such warrant the door of any such house, room, shop, warehouse, outhouse, building, or other place be not forthwith opened, the peace officer having the execution of such warrant, or any other person or persons to whom such warrant shall be directed, in the presence of any peace officer, in the daytime, may break open such door, and if any person refuse to permit any person duly authorized in that behalf to enter into any house, &c, for the purpose of making any such search, or resist, obstruct, molest, prevent, or hinder him in the execution of any such warrant, or in seizing or taking away any things which may be lawfully seized, or in apprehending or detaining any person who may lawfully be apprehended or detained, or otherwise in the execution of any of the duties, powers, or authorities given to him, every person so offending to forfeit 20*l*, and all constables and other peace officers are required to be aiding and assisting, and every constable or other peace officer for any neglect or refusal to aid and assist, or to execute or serve any warrant or summons, to forfeit 10*l*.

Penalty on persons resisting, 20*l*

Constables to aid and assist

Penalty for refusal

Persons possessed of printing presses may give notice thereof, and return lists of periodical papers

Sect 24 —Every person possessed of any printing press, or any machine for printing, may deliver in the manner hereinafter mentioned a notice thereof and also at the same time a list of the periodical papers for the printing of which any such press, &c, is used or intended to be used, and shall afterwards quarterly deliver in like manner a similar list of such periodical papers as aforesaid, and from time to time also give notice of the printing of any periodical paper not specified in the last quarterly list, and every such list and notice shall be signed by him, or by some person authorized in writing signed in the presence of an officer of stamp duties, and every such list and notice shall set forth the title of every such paper, and the name and place of abode of the printer as in the imprint, and of the person who shall employ the person possessed of such press, &c, to print or work off such paper, or who shall engage or use the same for that purpose, and every such notice and list shall be delivered to the Commissioners, or to some officer appointed to receive the same, at the head office in Westminster, Edinburgh, or Dublin, or to the distributor of stamps for the district

Such persons not to be liable to any penalty, &c.

Sect 25 —No person who shall have given such notice and delivered lists and notices of such periodical papers, to be liable to any penalty or forfeiture in respect of any paper specified in the last quarterly list, or in any subsequent notice, although liable to stamp duty, and printed on paper not duly stamped, unless the same be a registered newspaper, or unless the same has been printed,

after a notice by the Commissioners or any officer of stamp duties that it is chargeable with stamp duty.

Limitation of actions.

Sect. 26.—All actions for anything done under this Act to be commenced within three calendar months, and notice in writing to be given one calendar month at least before the commencement of the action; and the defendant may plead the general issue, and give this Act and any other matter or thing in evidence, &c.

Recovery and application of penalties.

Sect. 27.—All pecuniary penalties under this Act may be recovered in the name of the Attorney or Solicitor-General in England or Ireland, or of the Advocate-General or Solicitor-General in Scotland, or of the Solicitor of Stamps and Taxes in England or Scotland, or of the Solicitor of Stamps in Ireland, or of any person authorized by the Commissioners, or in the name of any officer of stamp duties, by action of debt, bill, plaint, or information in the Courts of Exchequer at Westminster, in Scotland, and in Dublin respectively, or by civil bill in the court of the recorder, chairman, or assistant barrister in Ireland, or in respect of any penalty not exceeding twenty pounds by information or complaint before a Justice of the peace in any part of the United Kingdom; and no person other than as aforesaid may inform, sue, or prosecute except where it is by this Act otherwise expressly provided and allowed; and the Commissioners, either before or after any proceedings commenced, may mitigate or compound any such penalty as they shall think fit, and stay any such proceedings on such terms as they shall judge reasonable; and the penalties to go and be applied to the use of his Majesty, and be deemed to be and be accounted for as part of the revenue arising from stamp duties: Provided that the Commissioners may give all or any part of such penalties as rewards to any person who shall have detected the offenders, or given information which may have led to their prosecution and conviction.

Commissioners may mitigate penalties and reward informers.

Mode of proceeding for penalties before justices.

Sect. 28.—Any Justice of the peace within whose jurisdiction the offence shall be committed may and he is hereby required, upon any information exhibited or complaint made, to summon the party accused and also the witnesses on either side, and whether the party accused shall appear or not any Justice present may proceed to examine into the fact, and upon due proof, either by confession or by the oath of a credible witness, convict such offender, and give judgment for the penalty and costs to be assessed by any such Justice, and issue his warrant for levying such penalty and costs, and also the reasonable costs and charges attending the distress, on the goods of such offender, and cause sale to be made thereof, in case the same shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods sufficient cannot be found to answer such penalty and costs, such Justice, or any other such Justice shall commit such offender to the common gaol or house of correction, for any time not exceeding three calendar months nor less than one calendar month, unless such penalty, costs, and charges be sooner paid; and any person aggrieved may appeal to the next General or Quarter Sessions held next after the expiration of ten days, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions, and such Justices at such sessions may examine witnesses on oath, and finally hear and determine such appeal; and in case the conviction shall be affirmed the Sessions may order the person convicted to pay such costs occasioned by such appeal as shall seem meet: Provided that no person convicted shall be permitted to appeal unless within three days after conviction he enter into a recognizance, with two sufficient sureties, to enter and prosecute such appeal, and to pay the amount of the penalty and costs, and also such further costs as shall be awarded: Provided also, that no such proceedings shall be quashed or vacated for want of form, or be removed into any superior or other Court or jurisdiction: And provided also, that any Justice before whom any person shall be convicted may mitigate the penalty; all reasonable costs and charges incurred as well in discovering

Appeal to sessions.

No Certiorari.

Justices may mitigate penalties.

as in prosecuting for such offence being always allowed, over and above the sum to which such penalty shall be mitigated, and provided that such mitigation do not reduce the penalty to less than one fourth, exclusive of such costs and charges.

Sect. 29.—The Justice shall cause the conviction to be made out in the manner and form set forth in this clause, or in any other form of words to the like effect, *mutatis mutandis.* Form of conviction.

Sect. 30.—Any Justice may summon any person to appear to give evidence; and if any person so summoned shall neglect or refuse to appear, without reasonable excuse stated upon oath and proved, or having appeared shall refuse to give evidence, he shall forfeit 10*l.* Witnesses.

Sect. 31.—In any proceeding under this Act, or for summoning any party, witness, or other person in or for the purpose of any such proceeding, it shall be sufficient that the process, summons, notice, demand, or order, or a copy thereof respectively, be left at the last known place of abode of such defendant or person to be summoned. Service of process, &c.

Sect. 32.—Repealing such of the first-mentioned Acts as remained unrepealed, or such parts as related to newspapers; and so much of the 60 Geo. III. c. 9, as subjected any newspaper or other paper or pamphlet to any stamp duty: and the whole of the 6 Geo. IV. c. 119, and the 5 Will. IV. c. 2. Repeal of Acts.

CIRCUMSTANCES constantly give rise to the question, What is a newspaper? which is not always answered to the satisfaction of the inquirer by a reference to the Act of Parliament relating to newspapers. What constitutes a newspaper.

The first Act granting stamp duties on newspapers, (10 Anne, c. 19,) imposed them on "newspapers, or papers containing public news, intelligence, or occurrences, printed in Great Britain to be dispersed and made public;" and the same definition, with slight variance, is to be found in all the subsequent Acts prior to the 60 Geo. III. c. 9. By this latter Act, which was passed for the purpose of preventing the circulation of certain papers, then periodically issued, of a blasphemous or seditious tendency, but not containing, substantively, news, by charging them with stamp duty, the definition of a newspaper was extended, by declaring "pamphlets, or papers containing public news, intelligence, or occurrences, *or any remarks or observations thereon, or upon any matter in Church or State,*" to be newspapers, if published in the manner therein mentioned. 10 Anne, c. 19. 60 Geo. III. c. 9.

The 6 Geo. IV. c. 119, imposed a reduced duty of 2*d.* upon every paper printed in Great Britain weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements, and not containing any public news, intelligence, or occurrences. 6 Geo. IV. c. 119.

Thus there existed, before these Acts were repealed by the 6 & 7 Will. IV. c. 76, three several descriptions of printed papers, which were to be deemed newspapers, liable to the stamp duties upon, and subject to the regulations relating to publications so called; all which descriptions have been imported into the last-mentioned Act, and are contained in the Schedule thereto as definitions of a newspaper, with the omission of the words "*or upon any matter in Church or State*" in the 60 Geo. III. c. 9, no papers, of any description, being now to be considered newspapers by reason of their containing remarks or observations upon any matter in Church or State.

Doubts were, however, suggested, contrary to the view entertained by the Commissioners of Stamps, sustained, by high authority (*b*), whether a paper could be a newspaper unless it came within the description contained in the 60 Geo. III. c. 9; it being contended that the declaration therein that certain publications should be deemed to be newspapers, was to be taken to be the only definition of a newspaper within all the existing Acts; but the 6 & 7 Will. IV. c. 76, may be said to have furnished a legislative interpretation opposed to such construction, by adopting (with the exception before mentioned) the three several descriptions. Allusion would not have been made to this question had not a similar doubt been raised under the present Act, by suggesting that a paper is not a newspaper by reason of its containing public news, intelligence or occurrences, unless it be published in the manner pointed out by the third definition; for this, however, there can be no good foundation, as so to interpret the Act would be wholly to annihilate the first and principal definition. The matter is readily explained. The legislature found the three descriptions of newspapers existing and in force, and continued them without alteration (except as pointed out). The difficulty, if any, arises, solely, from the circumstance of the words "public news, intelligence or occurrences" being repeated, in the manner in which they are, in the third definition. These words were so used because they were thus found in the 60 Geo. III. c. 9, and for the purpose of introducing the succeeding words "or any remarks or observations thereon;" such definition, therefore, really means this:—"a paper containing any remarks or observations upon public news, intelligence or occur-

6 & 7 Will. IV. c. 76.

(*b*) In *The Attorney-General* v. *Carpenter*, which was a prosecution for penalties for publishing an unstamped newspaper, Lord Lyndhurst, before whom the cause was tried in May, 1830, said that the publication might be a newspaper independently of the 60 Geo. III. c. 9.

rences printed in any part of the United Kingdom for sale, &c.," and must be so construed.

The general law which prohibits the reading of any document on a trial unless it be duly stamped, is not applicable to newspapers; therefore, a newspaper containing a libel may be read in evidence, although not stamped according to law (*c*).

An unstamped newspaper may be read.

It will be observed that no newspaper can be published before a declaration (in lieu of an affidavit as required by the old law) is made by the printer, publisher, and proprietor, or some of the proprietors, of certain particulars relating to such intended newspaper, nor until securities are given for the payment of the duties on the advertisements to be published in such newspaper, and also against the publication of libels. These documents are prepared by the Solicitor of Inland Revenue, upon instructions furnished to him on a printed form to be obtained at his office. A copy of such declaration, certified by a Commissioner of Inland Revenue or their proper officer to be a true copy, is, under the statute (6 & 7 Will. IV. c. 76), evidence in any proceeding against the parties making it, of the facts therein contained. And where a newspaper is produced corresponding in title, names of printer and publisher, and place of printing, with those particulars as set out in the declaration, proof of the purchase of the paper is dispensed with. Similar provisions were made by the 38 Geo. III. c. 78, in relation to the affidavit required by that Act, for which the declaration is substituted.

A declaration and securities required before a newspaper is published.

Cases respecting newspapers have, from time to time, been decided in reference to the foregoing statutes; and as such of the decisions as were come to under the repealed law may be applied to the present, the cases are here given.

In an action of libel against the publisher of a newspaper, proof that the defendant had given a bond, as proprietor, at the Stamp Office, (under the 29 Geo. III. c. 50, s. 10,) for securing the duties on the advertisements, and that he had from time to time applied to the Stamp Office respecting the duties on the paper, was deemed evidence for the jury to show that he was the publisher (*d*).

Proof of being the publisher.

This case was before the Act (38 Geo. III. c. 78), which, as already observed, provided peculiar means of proof; but it is presumed that any such provision would not preclude other evi-

(*c*) *Rex* v. *Pearce*, Peake, 75 (3rd edit. 106).
(*d*) *Rex* v. *Topham*, 4 T. R. 126.

dence of a person being a printer, publisher or proprietor, whether he has made any affidavit or declaration, or not.

The declaration must appear to be taken by authority.

To make a certified copy of the affidavit or declaration available, such affidavit or declaration must purport to be taken by a person having authority so to do. In *The King* v. *White* (*e*), the affidavit purported to be sworn before a person described as "a distributor, &c.," and no evidence being given to show the authority to take it, the certificate was held to be insufficient, Lord *Ellenborough* observing, that if the jurat had purported that the distributor had authority he would not have required evidence.

Evidence of place of publication.

The production of the usual certified copy of the affidavit or declaration, together with a copy of the newspaper from the Stamp Office corresponding therewith in all the necessary particulars, is evidence, not only of the publication, but of publication at the place mentioned in the document.—See *The King* v. *Hart and another* (*f*). In which case, also, it was objected that the 38 Geo. III. c. 78, s. 11, which dispenses with proof, is only in favour of persons seeking penalties under the Act; but the Court held that the Act was not so confined, that it extended to persons seeking damages for libels, &c. (*g*). Mr. Justice *Bayley* was of opinion that even without the aid of the statute there was, coupling the affidavit and newspaper together, *primâ facie* evidence of publication, which the defendants might rebut.

Statutory evidence available in actions for damages.

In criminal informations the same course as at *Nisi Prius*.

In *The King* v. *Donnison* (*h*), the Court determined that the rule established at *Nisi Prius*, that as soon as the Stamp Office affidavit is proved, the statute enables the prosecutor to put in a newspaper corresponding with it, and to use such paper as evidence against the defendant, should be pursued in the case of a rule for a criminal information.

Stamp Office and party's affidavit must agree in describing the publisher.

The Court discharged a rule for a criminal information where the affidavit upon which it was obtained described the paper as published by "*Samuel Francis*, Union Buildings, John Street, Liverpool;" and the Stamp Office affidavit by "*Samuel Francis*, Union Street, Castle Street, Liverpool;" observing, that when an individual calls on the Court for its summary interference he must come prepared in the first instance; the Act gives an easy process for bringing the defendant before the Court, and a party who

(*e*) 3 Camp. 97.
(*f*) 10 East, 94.
(*g*) See *Watts* v. *Fraser*, page 510, *post*.
(*h*) 4 B. & Ald 698.

seeks to avail himself of it should proceed strictly under the Act (*i*).

If imprint and declaration agree in substance, sufficient.

But it will be observed, that in order to dispense with the necessity for proving the purchase of a newspaper of the defendant, so as to charge him as the printer, publisher, or proprietor with the aid of the present statutory provision, (6 & 7 Will. IV. c. 76, s. 8,) it is not essential that the particulars, in which the paper and the Stamp Office declaration are required to correspond, should be set forth in precisely the same words in each; it is sufficient if they are, in substance, and in fact, the same in both; the statute providing that the newspaper shall be evidence, whether the particulars are set forth in the newspaper "in the same form of words as is contained in the declaration, or in any other form of words varying therefrom."

In an action for libel contained in a newspaper, tried before Lord *Denman*, the place of publishing, as set forth in the declaration, was "No. 23, Charles Street, in the Parish of St. Margaret, in the Borough of Leicester;" but, in the imprint, it was "at the corner of Charles Street and Hadfield Street, in the Parish of St. Margaret, in the Borough of Leicester," which was proved to be the same place; his Lordship thought the evidence of identity sufficient, and that the newspaper might be given in evidence (*k*).

Newspaper not annexed or referred to in affidavit, nor mentioned in the rule, insufficient.

In *The Queen* v. *Woolmer and another* (*l*), the affidavits on applying for a rule to show cause why a criminal information should not be filed against the defendants, for publishing libels in a newspaper, referred to the usual Stamp Office copy of the declaration made by the defendants, and certificate thereof, and a newspaper was produced corresponding therewith, but it was not annexed to any of the affidavits, nor referred to as an exhibit and filed; nor was the rule drawn up on reading the newspaper; on these objections being made the rule was discharged, the Court holding either of them sufficient.

Action for printing the paper not sustainable unless plaintiff be registered, &c.

A printer cannot maintain an action for work and labour for printing and publishing a weekly periodical work, parts of which were printed on stamped paper and distributed as newspapers, and parts on unstamped paper, half-yearly, bound up in volumes, unless he has made the affidavit (or declaration) at the Stamp Office under the Newspaper Act, or has his name and place of abode printed on the paper, as required by that Act (*m*).

(*i*) *The King* v. *Francis*, 4 N. & M. 257.

(*k*) *Baker* v *Wilkinson*, 1 Car & M. 399.

(*l*) 12 A. & E. 422; 4 P. & D. 137.

(*m*) *Marchant* v. *Evans*, 2 Moo. 14.

A person letting out his presses may bring an action for the hire thereof without being entered as printer.

A person who let out his men, types, and presses, for the purpose of printing a newspaper at his printing office, to one who was registered as the printer, publisher, and proprietor of the paper, brought an action against such printer, &c., and another person who was proved to be a proprietor, for goods sold and delivered, and for work and labour; and, in the particulars, the demand was described as relating to the composing and printing of the newspaper in question. It was objected that he could not recover, as printer, not having announced himself as such on the face of the paper; but the learned Judge (*Tindal*, C. J.,) conceived the plaintiff to be the printer for the purposes of the action, but the other within the meaning of the Act. On a motion for a new trial the Lord Chief Justice said that if it had been objected at the trial that the declaration had been improperly framed, (for work and labour instead of hiring men, presses, &c.,) he should, probably, have nonsuited the plaintiff, but that then it was too late. The defendant, who, actually, with the plaintiff's men, &c., did the work, was the printer within the Act of Parliament. A man might, certainly, hire the entire office for a week or a day, and why not a part? He satisfied himself with saying, that, upon the evidence given, the plaintiff was not so shown to be the printer, that the Court was bound to yield to the objection urged to his right to recover, as on a contract for work and labour (*n*).

But a person registered as proprietor is precluded from an action for printing.

But where a person had registered himself as the printer, publisher, and sole proprietor of a newspaper, he was not allowed to recover, in opposition to his own affidavit, in an action against other persons whom he proved to be the proprietors of the paper, for work and labour in printing it (*o*).

A contract not available against one who had ceased to be a proprietor.

A person registered as the proprietor of a newspaper, but who has ceased to be a proprietor, is not liable upon a contract subsequently entered into with a person who became a proprietor, but who neglected to register himself by making the proper declaration (*p*). It was doubted, by Mr. Justice *Maule*, in this case, whether a contract to write for a newspaper was a matter touching any publication, matter or thing, contained in the newspaper, within the meaning of the enactment making the copy of the declaration conclusive evidence.

Stamp Office

The delivery of a copy of a newspaper, containing a libel, to

(*n*) *Bagster* v. *Robinson and another*, 2 Moore & Scott, 160.

(*o*) *Stephens* v. *Robinson and another*, 2 Cro. & J. 209; 2 Tyr. 280.

(*p*) *Holcroft* v. *Higgins*, 15 L. J. R. (N. S.) C. P. 129; 2 M. G. & S. 488.

the officer at the Stamp Office is a sufficient publication of the libel (*q*).

copy of a newspaper evidence of libel.

But it is not essential that that particular copy should be produced where the statutory evidence is relied on. In an action for libel against the printer and publisher of a newspaper a certified copy of the Stamp Office affidavit was produced, and then a copy of a newspaper corresponding in all necessary particulars therewith; but it was contended that this was no evidence of publication; that the plaintiff ought either to have produced the copy of the newspaper delivered to the Commissioners of Stamps under the 38 Geo III. c. 78, s. 17, as in *The King* v. *Hart*, and *The King* v. *Amphlit*, or have proved that the copy produced was published by the defendant, as *non constat* that this copy had existence an hour before it was produced, or was not taken away from the printing office, or delivered by mistake; which would be no publication; *Rex* v. *Paine*, 5 Mod. 167; and *Barrow* v. *Llewellin*, Hob. 62. The Court, however, held that the evidence of publication was sufficient within the statute (*r*).

Not necessary to produce the Stamp Office copy to render the statutory evidence available.

The copy of a newspaper delivered at the Stamp Office is not, alone, sufficient proof in support of an allegation that a party was provoked by libels in the paper.

Such copy not sufficient proof in support of allegation that the party was provoked by libels in the paper.

In an action by the proprietor and editor of a literary work against the proprietor and printer of another literary work, for libel, the defendant, in mitigation of damages, proposed to prove libels published by the plaintiff against his, the defendant's work, which Lord *Denman* considered admissible; the defendant's counsel then put in the Stamp Office affidavit made by the plaintiff, and another, as proprietors of a certain newspaper, and a copy of the newspaper deposited at the Stamp Office corresponding therewith, and proposed to read out of such copy a libel of which there was some evidence that the plaintiff was author of; counsel for the plaintiff objected that the 38 Geo. III. c. 78, did not apply to such a case, and the Lord Chief Justice being of that opinion rejected the evidence.

On a motion for a new trial it was held, that in order to make such libels evidence it must be proved that they came to the knowledge of the party said to be provoked thereby. The Court could not infer, from the publication of a newspaper in this way, that other copies have come out. An objection taken that the statute

(*q*) *The King* v. *Amphlit*, 4 B. & C. 35.

(*r*) *Mayne* v. *Fletcher*, 9 B. & C. 382.

was not intended to supply means of proof on behalf of a *defendant*, in any proceeding, but only for the "plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by the Act," was not alluded to by the Court (*s*). Supposing this objection to be availing, it might be made, with equal effect, in reference to the 6 & 7 Will. IV. c. 76.

Service of Judge's order at the place of printing mentioned in affidavit sufficient.

Service at the place of printing a newspaper mentioned in the Stamp Office affidavit of an order of Court to answer for a contempt in publishing a statement of a trial before other parties under the same indictment were tried, contrary to the order of the Court, was deemed sufficient under the 38 Geo. III. c. 78, s. 12 (*t*). A similar provision is contained in the 6 & 7 Will. IV. c. 76, s. 9.

In what cases security against private libels available.

A plaintiff who recovers damages against the printer, or publisher of a newspaper, for a libel, will not be permitted to institute proceedings against the sureties under the 60 Geo. III. c. 9, and 11 Geo. IV. and 1 Will. IV. c. 3, unless he shows that he has used due diligence, without avail, to get satisfaction from the defendant's goods (*u*).

Nor can the security be made available except for damages recovered against the editor, conductor, or proprietor of the newspaper. Therefore where an action was brought by the *Duke of Brunswick* against the publisher of the Satirist newspaper, in his character of publisher, the Court considered that the statute did not apply.

Mortgagee of newspaper, not in possession, is not entitled to the benefit of his security against other creditors, unless he be registered.

The mortgagee of a newspaper, who does not cause himself to be duly registered at the Stamp Office, by making the proper declaration, and who permits the mortgagor to continue to print and publish the paper as before, down to the time of his bankruptcy, is not entitled to the benefit of his security against the other creditors. In *Longman* v. *Tripp* (*x*), it was held that property so situated came within the description of "goods and chattels which bankrupts have in their possession, order and disposition, and of which they take upon themselves the sale, alteration and disposition as owners," within the 21 Jac. I. c. 19, s. 11.

What is meant by Acts of Parliament relating to stamp duties.

The 38 Geo. III. c. 78, was passed for the purpose of regulating the printing and publishing of newspapers, and, with the exception of a few clauses respecting unstamped newspapers, it does not, in any way, relate to stamp duties. By the 44 Geo. III. c. 98,

(*s*) *Watts* v. *Fraser*, 7 A. & E. 223; 2 Nev. & P. 157.

(*t*) *The King* v. *Clement*, 4 B. & Ald. 218.

(*u*) *Pennell* v. *Thompson*, 3 Tyr. 823.

(*x*) 2 N. R. 67.

s. 10, it is provided, that no person shall commence any prosecution for a penalty, incurred under any Act relating to stamp duties, except the Attorney-General, or an officer of stamps. It was considered that this clause extended to the whole of the penalties under the 38 Geo. III. c. 78; but in a *qui tam* action for penalties under this latter Act, for printing a newspaper not containing the true name of the printer, &c., the Court held that it did not follow, that because a long Act contained a single clause giving a penalty respecting a stamp, it was to be called an Act relating to stamp duties. Lord *Denman* observed, "The best rule we can lay down is, that, in each particular action, the question must be, whether the *enactment*, upon which the proceeding is founded, relates to the stamp duties; whether the Act relates to the stamp duties, *with reference to the subject matter of that action*" (*y*).

In consequence of this decision an Act was passed (5 Will. IV. c. 2) extending the provision in the 48 Geo. III. c. 98, in effect, to all penalties under the 38 Geo. III. c. 78. The present Newspaper Act contains a similar provision, as to penalties under that Act. (6 & 7 Will. IV. c. 76, s. 27.)

(*y*) *Smith, q. t.* v. *Gillett*, 4 N. & M. 225.

Pawnbrokers.

25 Geo. III. c. 48.

To take out licences.

Sect. 1.—All persons using or exercising the business of a pawnbroker in Great Britain are required annually to take out licences for that purpose, charged with certain stamp duties. For the present duties see the TABLE.

Sect. 2.—The said duties to be under the care and management of the Commissioners of Stamps, who are to do all things necessary to be done for putting this Act into execution.

Acting without a licence.

Sect. 3.—No person whatsoever required by this Act to be licensed, shall, unless he be licensed, receive or take, by way of pawn, pledge, or exchange, of or from any person or persons whomsoever, any goods or chattels for the repayment of money lent thereon, in Great Britain, upon pain to forfeit for every offence the sum of 50*l.*

Commissioners or officer to grant licences.

Sect. 4.—Any two or more of the said Commissioners, or some person duly authorized by them, to grant licences to use or exercise the trade or business of a pawnbroker, in any city, town, or other place within Great Britain, for the space of one year, from the date of every such licence: and every person who shall take out such licence to take out another licence for another year, ten days at least before the expiration of that year for which he is so licensed, if he continue to use and exercise the said trade or business of a pawnbroker; and in like manner renew such licence from year to year, so long as he continue to use the business of a pawnbroker. See 9 Geo. IV. c. 49, as to the date and termination of licences.

Who shall be deemed pawnbrokers.

Sect. 5.—All persons who receive or take, by way of pawn, pledge, or exchange, any goods or chattels for the repayment of money lent thereon, to be deemed pawnbrokers within this Act.

Not those who lend at 5 *per cent.*

Sect. 6.—Not to extend to any person who shall lend money upon pawn or pledge, at or under the rate of 5*l.* *per centum per annum* interest, without taking any further or greater profit for the loan or forbearance of such money lent on any pretence whatever.

Separate licence for every shop.

Sect. 7.—No pawnbroker, by virtue of one licence, to keep more than one house, shop, or other place, for taking in goods or chattels to pawn; but for every house, shop, or other place, which he shall keep for the purpose, a separate licence to be taken out.

Persons in partnership.

Sect. 8.—Provided, persons in partnership, and carrying on business in one house, shop, or tenement only, not to be obliged to take out more than one licence.

Sect. 9.—Stamps may be altered and renewed as any others.

Sect. 10.—As to forging stamps, &c., see "FORGERY."

Provisions of former Acts.

Sect. 11.—All powers, provisions, &c., of former Acts relating to stamp duties to be in full force and effect with relation to the duties hereby imposed; and be applied and put in execution accordingly.

Penalties how to be recovered.

Sect. 12.—Penalties may be sued for in any of the Courts at Westminster, and in the Court of Sessions, Justiciary, or Exchequer in Scotland. Plaintiff to recover the same for his own use, with double costs. Altered by 44 Geo. III. c. 98, sections 10 and 27; see "PENALTIES."

44 Geo. III. c. 98.

The duties were by this Act repealed, and others granted in lieu, subject to the same provisions.

55 Geo. III. c. 184.

By this Act the last-mentioned duties were repealed and the present duties granted in lieu; see the TABLE. Present duties.

Sect. 8.—The powers, provisions, &c., of former Acts to be in full force, with relation to the new duties.

9 Geo. IV. c. 49.

Sect. 12.—Licences to pawnbrokers granted after the 31st July, and before the 1st September in any year to bear date the 1st August; those granted at any other time to be dated on the day on which they are granted; every such licence, of whatever date, to have effect and be in force from the day of the date thereof until and upon the 31st July then next following. Date and termination of licences.

As to licences for pawnbrokers to deal in plate, see "PLATE."

Ireland.

Licences to pawnbrokers in Ireland, to be granted by the Commissioners of Stamps and Taxes, or their officers, and charged with stamp duties, as in England, were first required to be taken out by the 5 & 6 Vict. c. 82, s. 17; see "APPENDIX."

Penalties for Offences.

UNDER this head will be arranged such enactments only, relating to the recovery and application of penalties under the Stamp Acts, as are of a general nature, and do not, exclusively, relate to any particular duties; those of the latter kind will be found on referring to the appropriate heads (*a*).

Previously to the 44 Geo. III. c. 98, the penalties imposed by the various Acts relating to stamp duties were, for the most part, disposed of in moieties, *viz.*, one moiety to the sovereign, and the other with full costs of suit, to the person who should inform or sue for the same in any of the superior Courts. In some cases, however, they were recoverable for the plaintiff's own use. Occasionally, in the later statutes the period within which a prosecution could be sustained by any person other than an officer of the Crown was limited, it being permitted only to the latter to sue after the expiration of such period, in which case the whole penalty was, of course, reserved to the Crown. In some instances jurisdiction was given to the magistrates, which still remains. By the 44 Geo. III. c. 98, the system was altered, the penalty being given, in every case, wholly to the Crown, with power to its officers, alone, to sue for it.

10 Anne, c. 19.

Two justices may hear offences within a twelvemonth.

Sect. 172.—Any two or more Justices of the peace residing near to the place where any pecuniary forfeitures, not exceeding 20*l.*, upon this or any Act touching any of the duties under the Commissioners of Stamps, shall be incurred, or any offence against any of the same Acts shall be committed, by which any sum of money only may be forfeited, may hear and determine the same; who are authorized and required upon information exhibited, or complaint made within one year after seizure made or the offence committed, to summon the party accused, and also all witnesses; and to issue warrants for levying any penalties adjudged, on the goods of the offender; and if any party find himself aggrieved, he may appeal to the Justices at the next General Quarter Sessions, who are empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and, in case of conviction, to issue warrants for levying the penalties.

Justices may mitigate penalties.

Sect. 173.—The respective justices, where they shall see cause, may mitigate or lessen the penalties, as they shall think fit, the reasonable costs and charges of the officers and informers, as well in making the discovery as in the prosecution of the same, being always allowed, over and above such mitigation; and so

(*a*) As to the penalties payable on stamping deeds, &c. see p. 285, *ante*.

as such mitigation do not reduce the penalties to less than double the duties, over and above the said costs and charges.

Sect. 174.—No writ of *certiorari* shall supersede any such proceedings.

26 Geo. III. c. 82.

How penalties to be applied.

Sect. 1.—Wheresoever any person is convicted before a Justice or Justices, for any offence against any Act now in being, or hereafter to be made, touching any duties under the said Commissioners, the Justice or Justices shall levy and apply the penalty in such manner as in such Act is contained; and in default of any express directions as to the applications, then as herein is directed.

Appropriation.

Sect. 2.—One moiety of every such penalty shall belong to the informer prosecuting within six calendar months; the other moiety (the charges for recovery deducted) to his Majesty.

Sect. 3.—The informer not to be entitled to any portion in default of prosecuting within six months, but the whole to go to the Crown.

To whom the Crown's share to be paid.

Sect. 4.—All penalties and shares of penalties due or payable to his Majesty, his heirs, or successors under this, or any former, or any future Act touching the said duties, to be, from time to time, paid to the Receiver-General of the duties (or some other person to be authorized by the Commissioners to receive the same), who is to keep a distinct account thereof, and pay the same, (the necessary charges of paying and accounting for the same being deducted,) into the receipt of the Exchequer, as herein is directed.

Form of conviction.

Sect. 5.—The Justice before whom any offender is convicted under any such Act may cause the conviction to be made out in the form, or to the effect supplied in this clause; to be written on parchment, and returned to the next General Quarter Sessions; and no such conviction to be removed by *certiorari* into any Court whatever, but to be subject to appeal as in and by any such Act is specially directed.

44 Geo. III. c. 98.

No penalty under Stamp Acts to be sued for except by the Attorney-General or an officer of stamps.

Sect. 10.—No person whatsoever shall commence, prosecute, enter, or file any action, bill, plaint, or information in any Court, or before any justice, for the recovery of any fine, penalty, or forfeiture, made or incurred by virtue of this, or any other Act relating to stamp duties, or any duties under the management of the Commissioners of stamp duties, unless the same be commenced, &c., in the name of the Attorney-General, in England, or the King's Advocate, in Scotland, or in the name of the Solicitor, or some other officer of stamps; and any such proceeding in the name of any other person shall be null and void.

Penalties to belong to the Crown.

Sect. 27.—All fines, penalties, and forfeitures under this Act, except where otherwise directed, may be recovered, &c., as any other penalty under the Stamp Laws; and all fines, penalties, and forfeitures heretofore imposed, or granted, by any Act relating to stamp duties, or this Act, shall go and be applied to the use of his Majesty, his heirs, and successors; anything in any Act to the contrary notwithstanding: Provided, that the Commissioners of Stamps, in every case in which any part of any such fine, penalty, or forfeiture, was, by any Act, given to the informer, may give such part of any such fine, penalty, or forfeiture or any proportion thereof, as they shall deem expedient, to any person who may inform for or discover any offence, in respect of which any such fine, &c., may be discovered, or assist in the recovery thereof.

Commissioners may reward informers.

53 Geo. III. c. 108.

Duties and penalties may

Sect. 23.—In all actions, bills, plaints, informations, and proceedings had, commenced, prosecuted, entered or filed, in the name of his Majesty, his

be recovered with costs.

heirs or successors, or in the name of any person for and on his or their behalf, for the recovery of any duties, debts, or penalties, granted or imposed, due or payable by or under any Act now in force relating to the duties under the management of the Commissioners of Stamps, or by this Act, his Majesty, his heirs, and successors may have and recover such duties, debts, and penalties with full costs of suit, and all charges attending the same.

Commissioners may stay proceedings on terms,

And give the penalties to informers.

Sect. 24.—The Commissioners of Stamps may stay the proceedings in any prosecution commenced by their direction for the recovery of any penalty or penalties incurred under any Act relating to any of the duties under their management, on payment of part only of such penalty or penalties, with or without costs, or on payment only of the costs incurred in the prosecution, or any part thereof, as they shall judge proper and expedient; and, at their discretion, may give all or any part of the sums paid by way of penalty in such prosecutions as aforesaid to the persons informing them of the offences in respect of which the same shall be paid.

7 & 8 Geo. IV. c. 55.

Sects. 6 and 7.—As to what shall be deemed proof in any proceeding of a person being a Commissioner or officer, and of any act done by any such person, see "STAMPS."

9 Geo. IV. c. 49.

Sect. 17.—Repealing so much of the 7 Geo. IV. c. 33 as authorized any person to prosecute, before any Justice, for any penalty under any Act relating to stage carriages.

Proceedings not in the name of an officer may be quashed.

Sect. 18.—In any case where any information shall be laid before any Justice of the peace by any person other than the solicitor of stamps, or any officer of stamp duties, for the recovery of any fine, penalty, or forfeiture under any Act relating to any duties under the management of the Commissioners of Stamps, the person against whom the information is laid may apply to the said Justice, or the Justices at the sessions in case of appeal, to quash the information or conviction, upon payment, by the defendant, of such costs and charges as to such Justice or Justices shall seem reasonable; and such Justice or Justices may quash the same accordingly.

This clause was introduced for the purpose of protecting persons against the common informer in cases, if any, under the stamp laws, to which, by express enactment, as in the Act referred to in the previous clause, or by construction, the provision of the 44 Geo. III. c. 98, s. 10, might not extend.

The following Acts may be referred to as containing enactments applicable to proceedings for penalties under the Stamp Laws in common with others.

31 Eliz. c. 5.

Sect. 5.—Limiting the period for commencing actions for penalties.

3 Geo. IV. c. 23.

For facilitating summary proceedings before Justices and others.

One Justice may receive the information or complaint, and summon the party, in cases where two Justices are required to hear and determine the complaint; and also enforce the conviction.

5 Geo. IV. c. 18.

For the more effectual recovery of penalties and for facilitating the execution of warrants.

Sects. 1 and 4.—The person convicted may be detained in custody until a warrant of distress issued for levying the penalty has been returned; or the offender may be committed at once where the Justice is satisfied that there are no goods; and so likewise in those cases where it will be ruinous, or in an especial manner injurious to the offender or his family to levy the penalty.

Sect. 2.—An offender may be committed if no distress can be found, in those cases where no other remedy than distress is provided.

Sect. 3.—The offender is not to be detained if he pays the penalty and costs.

Sect. 6.—Any constable, &c., within the jurisdiction of the Justice may execute a warrant within such jurisdiction, although not directed to him, and although the place be not that for which he is constable, &c.

11 & 12 Vict. c. 43.

This is an Act for facilitating the performance of the duties of Justices of the Peace out of Sessions, within England and Wales; but it is provided, by section 35, that it shall not extend to any information or complaint, or other proceeding under or by virtue of any of the statutes relating to the revenues of Excise, Customs, Stamps, Taxes, or Post Office.

As to what is an Act relating to stamp duties.

ON the question as to what is to be considered an Act relating to stamp duties, so as to take away the common right to sue for penalties imposed by it, see *Smith q. t.* v. *Gillett* (*a*), where the Court held, that it did not follow, that because a long Act contained a single clause giving a penalty respecting a stamp, it was to be called an Act relating to stamp duties. Lord *Denman* observed, that the best rule they could lay down, was, whether the Act related to the stamp duties with reference to the subject matter of the action in which the penalty was sought to be recovered.

(*a*) 4 N. & M. 225, and "NEWSPAPERS," p. 511, *ante*.

Plate.

THE STAMP DUTIES payable in respect of *Gold* and *Silver* PLATE are of two distinct kinds, regulated by separate Acts of Parliament; one is a duty on every piece of plate manufactured within the kingdom (*a*), and is paid at the Assay Office; the other, a duty on a licence for dealing in plate, to be granted by the Commissioners of Inland Revenue, or their officer. See the TABLE for the present duties.

The payment of the duty on plate is denoted by a stamp, which, in the statute first imposing a stamp duty of this description, (24 Geo. III. c. 53,) is styled, "The mark of the *King's Head*;" and is impressed at the Assay Office on every manufactured article liable to the duty. The expression "the *King's Head*" is understood to mean the representation of the head of the reigning sovereign; the present mark is, therefore, the *Queen's Head*.

Several marks are to be perceived on gold and silver plate; and, except in the case of articles composing a set, or perhaps purchased at the same time and place, they will rarely, in any two instances, be found, in all respects, alike. These marks are looked upon, by the uninitiated, as a sort of mystery; and, no doubt, the object and meaning of them have been a subject of speculation in the minds of most observers. Many members of the craft, in all probability, do not themselves possess a perfect knowledge in these matters; a little information, therefore, upon the subject may not be unacceptable; and, inasmuch as an intimate connexion subsists between the duty mark and the goldsmiths' marks, or Hall marks, as they are commonly termed; all of them being impressed at the same time, and, frequently, by means of one and the same instrument; and as, with the view to protection against counterfeits, and the consequent security of the revenue, regard is always had, in cases of forgery, to the laws by which the latter marks are regulated, the forging of one mark necessarily involving that of the others, the particulars proposed to be given here may not be deemed altogether misplaced.

There appears to have been great jealousy from an early period

(*a*) With certain exceptions.

in preserving the pureness of gold and silver plate, and many very stringent laws, most of which may still be considered as in force (*b*), were, in the reigns of EDWARD *the First*, and subsequent monarchs, ordained, for preventing a debasing of the standard; and the Goldsmiths' Company in London, in a measure constituted the guardians of the "touch" throughout England, were invested, by charter as well as by statute, with powers to the same end.

This company, in which great trust was, manifestly, reposed, seems also to have formed a kind of normal school, for the instruction of members of other fraternities; it being provided by the statute 28 Edw. I. c. 20, (1300,) that "all the good towns of England, where any goldsmiths be dwelling, be ordered according to this statute, as they of London be, and that one come from every good town to London to be ascertained of the touch."

A single mark, that of the *Leopard's head*, was the only one formerly impressed on plate. This mark was required by the statute of Edw. I. to be put upon all vessels of silver, of "sterling allay," or better; it being ordained that no one should work worse silver than money, and that no vessel of silver should depart out of the hands of the worker, until it was assayed by the wardens of the craft, and marked with the *Leopard's head*. It is thereby also ordained, that no one work worse gold than of the "touch of Paris;" and that the wardens go from shop to shop, among goldsmiths, "to essay if the gold be of the same touch that is spoken of before." The statute contains no direction for marking gold, but, in all probability, the *Leopard's head* was struck upon it. This mark is still in use; it forms a portion of the arms of the Goldsmiths' Company of London, and is, legitimately, and peculiarly, the mark of that company. It is the only mark used by the company to designate plate assayed at their hall. It has continued in use, however, both at York, and Newcastle-upon-Tyne; but it answers no object there, and is only an unnecessary incumbrance. In ancient times, before the present provincial

(*b*) In the year 1775 a person was indicted upon the statute 28 Edw. I. c. 20, for making silver plate of worse alloy than the standard alloy of the realm. The indictment contained a count also on the 6 Geo. I. c. 11, and one for an offence at common law, and the defendant was found guilty upon all. On a motion in arrest of judgment, on the ground that the statute of Edward the First was repealed, the Court held that the statute was still in force; and Lord *Mansfield* referred to two cases, (*Rex* v. *Priest*, 1758, and *Rex* v. *Hawkins*, 1759,) where the parties were tried before him and the Court afterwards pronounced judgment of fine and imprisonment. *Rex* v. *Jackson*, Cowp. 297—1775.

assay offices were established, and when only one mark was impressed on plate throughout the kingdom, to give it currency, the case was different; but since modern statutes have fixed standards of plate, and have appropriated other peculiar marks to designate the respective standards, and the places of assay, the *Leopard's head* has ceased to have any signification, except in London; and has, therefore, been properly discontinued at the provincial assay offices, except those alluded to. Sometimes the head is crowned; for this, however, there would seem to be no authority (*c*).

If the *Leopard's head* be found on any article of plate not accompanied by the *arms* of the City of *York*, (popularly described as a *cross* with *five lions*,) or those of Newcastle, (*three castles*,) it indicates *London* as the place of assay, and, with, perhaps, a few exceptions, as that of the manufacture also; the peculiar marks of the other companies pointing out, in like manner, the places of assay, and the localities in which the articles bearing them were made. The places at which assay offices are established in the United Kingdom, besides London, are York, Exeter, Chester, Newcastle-upon-Tyne, Birmingham, Sheffield (the latter for silver wares only), Edinburgh, Glasgow, and Dublin; and the peculiar mark of the Company at each place, in England (*d*), is as follows, *viz.*:—

At York, Exeter, Chester, and Newcastle-upon-Tyne .	The *Arms* of those Cities and Town respectively.
Birmingham	An *Anchor*.
Sheffield	A *Crown*.

Except at Sheffield, the *crown* is used only on gold; at that place gold is not assayed, and that mark, therefore, found on silver, denotes Sheffield as the place of assay.

The cities of Bristol and Norwich have never availed themselves of the power given to them to establish assay offices. Lincoln, Salisbury, and Coventry are spoken of in a statute of Henry VI. as places for assaying silver; but they have long ceased to possess the privilege.

(*c*) Great difficulty is experienced in putting a satisfactory interpretation upon the statutes relating to the marking of plate, and the strict right of the provincial companies to impress the *leopard's head* on silver of the lower standard may, perhaps, be sustainable; but, however ornamental the mark may be considered, it is, as observed above, altogether useless as regards those companies.

(*d*) The marks in Scotland and Ireland will be noticed separately, see page 522.

The marks common to all assay offices in the United Kingdom are, the *Queen's head;* and, in England, one to designate each particular standard; there being two standards of gold, and two of silver, *viz.*: 22 carats, and 18 carats, respectively, of fine gold to the pound troy; and, 11 oz. 10 dwts. (*e*), and 11 oz. 2 dwts., respectively, of silver to the pound troy, the marks for which respective standards are as follows, *viz.*:—

GOLD of 22 carats.	A *Crown* and the figures 22 (substituted by the 7 & 8 Vict. c. 22, s. 15, for the *lion passant*).
GOLD of 18 carats.	A *Crown* and the figures 18.
SILVER of 11 oz. 10 dwts.	The *lion's head erased,* and the figure of *Britannia* (*f*).
SILVER of 11 oz. 2 dwts.	The *lion passant.*

One other mark is impressed at the assay office, *viz.*: a single letter, which is selected by each company, and is styled the *variable letter,* being changed every year. In addition to the foregoing marks, another will be noticed, altogether distinct from and unconnected with the former, and consisting of two or more letters. This mark is that of the manufacturer, being the initials of his name; it must be struck on every article before it is taken to the assay office; by which means, the manufacturers of the various wares sent to be assayed are known to the company, their marks being, as by law required, previously entered at the office.

Jewellers' work, and such wares as are incapable of bearing the marks without injury, together with a few specified articles, are exempt from the assay; and watch cases, whether of gold or silver, with certain other manufactures, chiefly of trifling value, are free from duty, and are not, therefore, stamped with the *Queen's head;* with these exceptions, it will be perceived that every article of plate should bear five (sometimes six) distinct marks, *viz.*:—

The maker or worker's mark, being the initials of his name.

The mark to denote the particular standard.

The company's peculiar mark to point out where the assay is made.

The variable letter to show the year. And

(*e*) Plate of this standard is scarcely ever manufactured.

(*f*) *Britannia* only, at Birmingham and Sheffield.

The *Queen's head*, the government mark, to signify the payment of the duty (*g*).

Scotland.

In Scotland the places of assay are Edinburgh and Glasgow. By the 6 & 7 Will. IV. c. 69, the marks required to be impressed are as follows, *viz.*:—

GOLD of 22 carats. SILVER of 11 oz. 2 dwts.	The *thistle*, a variable letter, the company's mark.

GOLD of 18 carats.—The figures 18 in addition to the above.

SILVER of 11 oz. 10 dwts.	The figure of *Britannia* in addition to the same.

The maker's mark, the initials of his name, or, if a partnership, of the name of the firm, is to be struck on every article.

The *Queen's head*, as the duty mark, is also to be impressed where the duty is payable.

The company's mark at Edinburgh is a *castle*.

At Glasgow it is a *tree*, with a *fish*, a *bird*, and a *bell*, being the city arms.

In lieu of the *thistle*, a *lion rampant* is used at Glasgow. This latter mark is required to be impressed on all plate assayed at Glasgow by the 59 Geo. III. c. xxviii., which first established an assay office there; but the 6 & 7 Will. IV. c. 69, appointing the *thistle*, as a mark for plate assayed in Scotland, makes no exception of Glasgow.

Ireland.

The only place of assay is Dublin, where the marks used are as follows, *viz.*:—

GOLD of 22 carats.	*Hibernia, harp and crown, variable letter, Queen's head.*

GOLD of 20 carats.—The same marks, and the *Prince's plume*.

GOLD of 18 carats.	The same marks as for the higher standard, with the *Unicorn's head.*

(*g*) It is probable that the system of assaying plate will undergo revision; if this should be the case some alteration will no doubt be made in the marks, so that they may be more distinctly defined in reference to the different standards.

SILVER of 11 oz. 2 dwts. the only standard.	The same marks as for gold of the higher standard.

These marks are in addition to the maker's mark.

Nothing can be more injudicious than the use of the same marks on silver as on gold, without distinction; it leaves a door open to great fraud upon the public. Ireland is not, however, singular in this respect. In Scotland the marks on silver of 11 oz. 2 dwts. are precisely the same as those on gold of 22 carats standard; and so it was, also, in England until the 7 & 8 Vict. c. 22, by s. 15 of which the gold plate mark was altered.

Statutes relating to the

DUTIES ON PLATE.

6 Geo. I. c. 11.

By this Act a duty, collected under the Excise laws, was granted on silver plate; which was repealed by the 31 Geo. II. c. 32, and, in lieu, a duty on licences to sell plate was substituted. See the Acts relating to "PLATE LICENCES."

24 Geo. III. c. 53.

Granting a duty of 8*s*. per oz. troy on gold plate, and 6*d*. per oz. on silver plate, after the 1st Dec. 1784, imported into, or made or wrought in Great Britain, and which ought to be touched, assayed, and marked. To be paid by the importer, or the maker, or worker, respectively.

Sect. 2.—The duties on plate made or wrought in Great Britain, to be under the Commissioners of Stamps, who are to do all things necessary for putting this Act into execution.

Sect. 3.—The duties upon plate imported to be under the care and management of the Commissioners of Customs.

Notes to be sent to the Assay Office with parcels of plate.

Sect. 4.—Every manufacturer, who shall work or make any gold or silver plate, required to be assayed and marked, shall send with every parcel of such gold or silver to the assay office, a note containing the day of the month and year, the name of the worker or maker, and place of his abode, and also all the species of plate, and the number of each species, with the total weight of such parcel, and also the duty upon the total weight.

Plate to be marked with King's head. Duties to be paid.

Sect. 5.—The wardens, or their deputy assay-master, or other person, shall mark with the following new mark, that is to say, with the mark of the *King's head*, over and besides the several other marks directed by law, all and every such pieces or parcels of gold or silver plate; and shall, previous to marking or assaying such plate, receive and give a receipt for the duty; and in default of

receiving such duty, the company or assay office so marking or assaying such plate, shall be accountable for the duty, as if the same had actually been received.

Accounts to be kept by company.

Sect. 6.—The officer who shall receive the duties with the notes, daily, as soon as he has entered the same in the books of the company, to deliver the notes and pay the duties to the clerk or accountant of the company, who is to file the notes and enter the same, and keep a true and faithful account in books kept for that purpose, of the duties received; to be open for the inspection of any person authorized, under the hands and seals of the Commissioners.

Allowance for goods in a rough state.

Sect. 7.—The person appointed to receive the duties, where plate is sent in the same rough state as heretofore, to make a deduction of one fifth from the weight, and an allowance of one fifth part of the duty, and at the bottom of the note express the deduction and allowance: no allowance to be made on any quantity of silver plate less than one ounce troy, nor to any fractional part of an ounce. See 25 Geo. III. c. 64.

Plate not to be sold until marked.

Sect. 8.—No goldsmith, silversmith, or other person whatsoever, making or selling, trading or dealing in gold or silver wares, shall sell, exchange, or expose to sale, in Great Britain, any gold or silver vessel, plate, or manufacture of gold or silver whatsoever, made after the said first day of December, one thousand seven hundred and eighty four, or export the same out of the kingdom of Great Britain, until such time as such vessel, plate, or manufacture of gold, (being of the standard directed by law,) and such vessel, plate, or manufacture of silver, (being likewise of the standard directed by law,) shall be marked with the new mark hereinbefore directed, upon pain of forfeiting 50*l.*, to be recovered and disposed of as hereinafter is directed; and for default of not paying down the penalty upon conviction, the offender shall be committed by the Court to the house of correction, there to remain, and to be kept to hard labour, for any time not exceeding one year, nor less than six months, or until payment be made; and also upon pain that such gold and silver vessel, plate, and manufacture shall be forfeited, one moiety thereof to the King, and the other to such person who shall sue for the same. See Sect. 17.

On penalty of 50*l.*

And forfeiture of the goods.

Sect. 9.—Not to extend to any of the wares specified in this clause. See TABLE for the present exemptions.

Duty to be returned for plate defaced.

Sect. 10.—When gold or silver found to be coarser than standard, shall be cut, broken, and defaced, then, (where no intended fraud shall appear,) the duty shall be returned; the company to make an entry of the species and weight of each parcel so cut, broken, and defaced by them, and the names of the persons to whom the same did belong, and the amount of the duty so returned.

Sects. 11 & 12.—Relating to the drawback on plate exported. Repealed by the 25 Geo. III. c. 64.

Goldsmiths' Company in London to deliver quarterly accounts at the head office.

Sect. 13.—The clerk or accountant of the company of goldsmiths in London shall, within two months after the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, or at such other times, as may be appointed by the Commissioners, giving a previous public notice of fourteen days, or more, in the London Gazette, deliver to the Commissioners, or to the person appointed by them for the purpose, at the head office of the said Commissioners, true copies of the accounts hereinbefore directed to be kept for the quarter which shall be completed before such day of delivery, or notice, as the case shall be; and, at the same time, shall pay such sum and sums which shall appear to be due on such accounts to the Receiver General of stamp duties, or to the proper officer appointed to receive the said duties, upon pain of forfeiting, for every default in not delivering true copies of such accounts, 500*l.*; and for every default in payment, double the amount of the money due.

Other companies to deliver accounts, &c., to distributor.

Sect. 14.—The person appointed to receive the duty by the Goldsmiths' Company at Edinburgh, or by the companies of Birmingham and Sheffield, or the respective assay offices at York, Exeter, Bristol, Chester, Norwich, and Newcastle-upon-Tyne, or other cities or places where any assay office shall or may be established, shall, at the times aforesaid, or at such other times after

the expiration of the two months as may be appointed by the head distributor, or the person authorized to receive the said duties, giving a previous notice of fourteen days or more, in the London Gazette, or in the newspaper, if any published in the county where such head distributor resides, deliver to such head distributor, or other person aforesaid, true copies of the accounts hereinbefore directed to be kept by such companies or assay offices, for the quarter which shall be completed before such day of delivery, or notice, as the case shall be; and, at the same time, shall pay to such head distributor, or other person as aforesaid, all sums of money which shall appear to be due upon such accounts; under the penalty of forfeiting, for every default in not delivering such accounts, 50*l.*; and for every default in payment, double the amount of the moneys due.

Allowance for receiving duties.

Sect. 15.—The said Receiver General, and the said distributor or other person, shall make an allowance to all and every the clerks, accountants, or other persons for their trouble in receiving the duties and making out the account, at and after the rate of sixpence in the pound out of the moneys regularly accounted for and paid.

Sect. 16.—Relating to forging the mark of the King's Head; see page 256, *ante*.

Penalties.

Sect. 17.—As to the division of penalties to be sued for in any of the Courts at Westminster, or in the Court of Exchequer in Scotland, see 44 Geo. III. c. 98, s. 10, page 515, *ante*.

General issue.

Sect. 19.—If any person be sued, molested, or prosecuted for anything by him or them done or executed in pursuance of this Act, he shall or may plead the general issue, and give the special matter in evidence for his or their defence; and if a verdict pass for the defendant, or the plaintiff be nonsuited, the defendant shall have treble costs.

25 Geo. III. c. 64.

Allowance of 1-6th part of the duty for unfinished plate.

Sect. 1.—The person appointed by the said companies or assay offices to receive the duties where plate is sent to be marked in any unfinished state, so that a diminution in the weight thereof must necessarily remain to be made before the same shall be finished, shall, in respect of such diminution as aforesaid, make a deduction of one sixth part from the weight, and an allowance of one sixth part of the duty, instead of one fifth part, and shall, at the bottom of the note express the deduction and allowance accordingly.

Sect. 2.—Repealing sections 11 and 12 of the last Act relating to the exportation of plate.

New provision as to exporting plate.

Sect. 3.—In case any person shall at any time export by way of merchandise, for any foreign parts, any plate of gold or silver, wrought or manufactured in this kingdom, chargeable with duty, and the same shall appear to have been made or marked after 1st day of December, 1784, and the duties paid thereon, and shall give sufficient security, before the shipping thereof that such plate shall not be re-landed or brought again into Great Britain; and shall make proof upon oath that the same was actually made or marked after the said time, which security shall be taken in the King's name, and to his use, and the oath administered by the customer or collector of the port of exportation, without fee or reward; then, and without the production of any such certificate, or notarial or other act, as in the Act is mentioned, the said customer or collector shall give to the exporter a debenture, expressing the true kinds and quantities of such plate so exported or shipped; and the exportation or shipping thereof being certified by the searcher upon the said debenture, the collector or receiver of the said duty upon plate, at the several assay offices where the same were marked and assayed, shall, upon the said debenture so certified, being produced to him, forthwith pay a drawback or allowance of the said duties, out of the duties then in the hands of the said receiver or collector, without fee or reward; and if he shall not have money in his hands, then the Receiver General of stamp

duties for the time being is hereby required to pay the said debenture out of the duties arising by this Act.

Watches, how to be marked.

Sect. 4.—The exporters of gold and silver watches shall mark or engrave in the inside of every case or box of each watch, enclosing the works thereof, the same numbers and figures which shall be respectively marked or engraved on the works of the watch which shall be enclosed in such case or box.

When bonds to be cancelled.

Sect. 5.—All securities and bonds, required to be taken as aforesaid, shall continue and remain in force, until the exporter shall produce and deliver to such customer or collector the bill of lading thereof, and which shall have at the foot the receipt of the master of the vessel on board of which the said plate or manufactures were shipped, and also a receipt or certificate, on the back under the hand of the person to whom such plate was consigned certifying that the same has been received, and mentioning in such receipt or certificate the true kinds and quantities of plate so consigned and received, and the name of the person consigning the same; and also if such plate shall consist of watches, the numbers or figures marked or engraved in the inside of the case or box of each such watch, that then such securities and bonds shall and may be delivered up and cancelled.

NOTE.—Watch cases are now exempted from duty.

If ship lost.

Sect. 6.—Provided that where the ship or vessel shall be lost, or shall not, within the space of three years, return to any port in Great Britain; upon due proof thereof being made to the customer or collector at the port at which the said drawback was received, and the said bonds given, the said customer or collector shall deliver up to such exporters their securities so given by them, in order that the same may be cancelled, if no fraud therein shall in the mean time have appeared, or no prosecution thereon shall have been commenced.

30 Geo. III. c. 31.

Repealing the exemption of articles from the liability to duty specified in the 24 Geo. III. c. 53, and substituting others, being the same as are contained in the Act granting the present duties, and specified in the TABLE.

37 Geo. III. c. 90.

Granting additional duties on plate, *viz.*:—

	s.	*d.*
Gold, per oz.	8	0
Silver, „	0	6

38 Geo. III. c. 24.

Repealing the duties on plate used for watch cases.

44 Geo. III. c. 98.

Repealing all the said duties and granting others in lieu, *viz.*:—

	s.	*d.*
Gold, per oz.	16	0
Silver, „	1	3

And granting an allowance for receiving the duties; and also allowing the drawback of the whole duties on plate exported by way of merchandise to Ireland or any foreign parts. Such duties, allowance, and drawbacks to be collected and made under the provisions of the former Acts. Drawback.

See "DISCOUNT" for the present allowance, page 251, *ante*.

52 Geo. III. c. 59.

Allowing the drawback to the manufacturer or exporter, whether the plate exported be intended as merchandise or not; provided proof be adduced to the satisfaction of the Commissioners of Customs that the plate is new plate, and has never been used. Allowed on new plate, whether exported as merchandise or not.

52 Geo. III. c. 143.

Relating to the forging of the mark, and selling plate with a forged mark, see "FORGERY." Forgery.

55 Geo. III. c. 185.

Repealing the duties granted by the 44 Geo. III. c. 98, and granting others in lieu, for which see TABLE. Present duties.

Sect. 4.—All the powers, provisions, clauses, regulations and directions, fines, forfeitures, pains and penalties contained in, and imposed by any Acts relating to the duties repealed, and to any former duties of the same kind, to be in force, and applied for raising, levying, collecting and securing the duties hereby granted. Provisions of former Acts continued.

Sect. 7.—Relating to the forging of the mark, &c.—See "FORGERY." Forgery.

1 Geo. IV. c. 14.

Sect. 1.—No drawback or allowance to be paid, nor any debenture given on the exportation to foreign parts of any plate of gold wrought or manufactured into rings. No drawback on rings.

Sect. 2.—Nor of any article of gold, unless the same exceed the weight of 2 oz. Nor on gold unless exceeding two ounces.

3 & 4 Will. IV. c. 97.

Sect. 21.—The drawback on plate (new, and not used,) exported from Ireland to foreign parts may be allowed, as in Great Britain. Drawback. Ireland.

1 Will. IV. c. 66.

4 & 5 Vict. c. 56.

Taking away the capital punishment in cases of forgery.—See "FORGERY."

7 & 8 Vict. c. 22.

To amend the laws in force for preventing frauds in the marking of gold and silver wares in England.

Regulations as to assaying and marking plate where additions are made.

Sect. 5.—If any ware of gold or silver which shall have been assayed and marked shall be altered, by addition thereto or otherwise, so that the character or denomination, use or purpose, shall be changed, or shall have any addition made thereto (although there be no such change) in greater proportion to the original weight than four ounces to the pound troy, such ware to be again assayed and marked as a new ware, and the duty paid upon the whole: provided, that if such addition do not bear such greater proportion, and the character or denomination, use or purpose, be not changed, the addition only to be assayed and marked, and pay duty; provided the ware be first brought to the assay office, and the company assent; and every dealer who shall so alter or change the character or denomination of any such ware, or shall make, to any such ware, any addition of gold or silver, or of base metal, of greater proportion than as aforesaid without sending such ware to be assayed, or of not greater proportion, without procuring the assent of the company, or who shall sell or exchange, or expose or keep for sale, or export or attempt to export from England, or shall have in his possession, any such ware so changed, or added to, the same, or the addition thereto, not having been so assayed and marked as aforesaid, shall for every such ware forfeit 10*l.*, to be sued for by any of the several companies of goldsmiths or guardians; and every such ware, if found at any place where any such dealer shall carry on his business, may be seized by any of the companies or guardians and be dealt with as hereinafter is directed.

Dealers to be exempted in certain cases.

Sect. 6.—Provided—that every such dealer who shall have sold, &c., any such ware, and shall within twenty-one days next after notice make known to the nearest company the person from whom he had the ware, shall be exempted from the penalty or forfeiture.

Officer marking base metal, the company to forfeit 20*l.*

The officer to be dismissed.

Sect. 7.—If any officer of or person employed by any of the companies mark, or suffer to be marked, any ware of base metal with any die or other instrument used by the company to denote that the same is standard, the company to which he belongs shall forfeit to her Majesty 20*l.*, to be sued for as penalties under any Act relating to stamp duties; and such officer or person, upon complaint or information by any officer of stamp duties to any Justice, upon the oath of a credible person, and upon being convicted by such Justice, shall be by him forthwith dismissed from his office, and be incapable afterwards of holding any office in or under the same or any other of the companies; and every ware of base metal so marked, found in the possession of any dealer, or of any officer of the companies, may be seized by any other of the said companies, and shall be dealt with as hereinafter is provided.

Recovery and application of penalties.

Sect. 10.—The penalties may be sued for and recovered, with full costs of suit, in any of the Courts at Westminster, in the name of any master, warden, assayer, clerk, or other officer of any of the said companies entitled to sue for the same, or where the penalty shall be forfeited to her Majesty in the name of the Attorney-General, or of any such officer, or where the penalty shall be forfeited to her Majesty in the name of an officer of stamp duties, before a Justice of the peace, as any penalty by any officer of stamp duties; and every such penalty sued for in the name of any officer of the companies shall go to the company, to be applied in defraying the expenses of their assay office, and of detecting and prosecuting offenders against this Act.

Construction of terms.

Sect. 14.—"Base metal" to mean any metal other than gold or silver of the respective standards; "dealer in gold or silver wares" to mean every goldsmith and silversmith and every worker, maker, and manufacturer of and trader and dealer in gold or silver wares; "die" to mean any die, plate, tool, or instrument whatever, by means whereof any mark can or shall be made upon any

metal whatsoever; "her Majesty" to mean her Majesty, her heirs and successors; "mark" to mean any mark, stamp, or impression of and made with any die or other instrument, or produced by any other means whatsoever upon any metal whatsoever; "ware" to mean any plate, vessel, article, or manufacture of any metal whatsoever; the singular or plural number or the masculine gender to include several persons or matters or things as well as one person or matter or thing, and one as well as several, females as well as males, bodies politic or corporate as well as individuals, unless otherwise specially provided, or the context be repugnant.

See also "Forgery." "Fraud."

Ireland.

The statutes relating to the duties on gold and silver plate in Ireland are the 47 Geo. III. session 1, cap. 18; 47 Geo. III. session 2, c. 15; 3 & 4 Will. IV. c. 97, s. 21; and 5 & 6 Vict. c. 82. See "Appendix."

Statutes relating to

LICENCES TO DEAL IN PLATE.

31 Geo. II. c. 32.

Repealing the Excise duty on wrought plate granted by the 6 Geo. I. c. 11.

Sect. 2.—In lieu thereof to be paid a duty of forty shillings, for a licence to be taken out by each person trading in, selling, or vending gold or silver plate. Duty on licences.

Sect. 3.—No person whatsoever, who doth or shall trade in, vend, or sell any gold or silver plate, shall presume, by himself, or by any other person whatsoever employed by him, for his benefit, either publicly or privately to trade in, vend, or sell any gold or silver plate, without first taking out a licence for that purpose, before he shall trade in, vend, or sell any such gold or silver plate, for which he shall pay forty shillings. Such licences, within the limits of the chief office of Excise, to be granted under the hands and seals of two or more of the Commissioners of Excise; if without the limits, then under the hands and seals of the several collectors and supervisors of Excise within their respective collections and districts. If within the limits of the city of Edinburgh, under the hands and seals of two or more of the Commissioners of Excise in Scotland; if in any other part of Scotland, under the hands and seals of the several collectors and supervisors of Excise in Scotland, within their respective collections and districts. Traders in plate to take out licences.

Sect. 4.—Every person who shall take out any such licence is required to take out a fresh licence ten days at least before the expiration of twelve calendar months after taking out the first licence, before he do presume to trade in, vend, or sell any gold or silver plate, and in the same manner to renew every such licence from year to year, paying down the like sum of forty shillings; and if any person shall presume, or offer to trade in, vend, or sell any gold or silver plate, without first taking out such licence, and renewing the same yearly, in manner aforesaid, he shall forfeit 20*l.* for each offence. To be renewed every year. Penalty.

Who shall be deemed traders.

Sect. 6.—All persons using the trade of selling or vending gold or silver plate, or any goods or wares composed of gold or silver, or any goods or wares in which any gold or silver is or shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or public sale, or by commission, shall respectively be deemed traders in, sellers, or vendors of gold or silver plate within the intent and meaning of this Act, and shall take out a licence for the same. See 8 Vict. c. 15, *post*, as to auctioneers.

For partners one licence sufficient.

Licence to serve only for the house where party lives, &c.

Sect. 7.—Provided, that persons in partnership, and carrying on their trade or business in one house, shop, or tenement only, not to be obliged to take out more than one licence for carrying on such trade or business; and no licence to authorize any person who shall sell plate in shops, to sell plate in any other shop or place, except in such houses or places thereunto belonging wherein he shall inhabit and dwell, at the time of granting such licence, or in booths or stalls at fairs or markets.

Exception.

Sect. 10.—Not to extend to subject any person to any penalty for selling gold or silver lace, or gold or silver wire, thread, or fringe, without such licence.

Recovery of penalties.

Sect. 11.—Prosecutions for the recovery of penalties may be determined in any of the Courts at Westminster, or in the Court of Exchequer in Scotland, or, for offences committed within the limits or jurisdiction of the chief office of Excise in London, by any three or more of the Commissioners, or by any two or more of the Justices of the Peace; with leave for the informers or defendants to appeal to the next Quarter Session; and the said Commissioners and Justices are, upon complaint upon oath, to summon the party accused; and upon due proof, by confession or the oath of one or more credible witness or witnesses, to give judgment and issue warrants for levying the penalties upon the goods and chattels of the party, and to cause sale to be made of such goods and chattels, if not redeemed within fourteen days; and for want of sufficient distress to imprison the party offending till satisfaction be made.

Application of the penalties.

Sect. 12.—All such penalties (the necessary charges for the recovery thereof being first deducted) shall be distributed, one moiety for the use of his Majesty, and the other to him who shall inform or sue for the same.

Limitation of actions.

Sect. 13.—If any action or suit be commenced against any person for any thing done in pursuance of this Act, the defendant may plead the general issue, and give the special matter in evidence, &c.

32 Geo. II. c. 24.

Traders in small wares exempted.

Sect. 1.—No person to be liable to take out any licence for selling any quantity of gold not exceeding two pennyweights in any one separate and distinct ware or piece of goods, or any quantity of silver not exceeding five pennyweights in any one separate and distinct ware or piece of goods.

Traders in large wares, and also pawnbrokers and refiners, to pay a higher duty.

Sect. 2.—And, in order to make good any deficiency by reason of the exemption aforesaid, a duty of 5*l.* to be paid for every licence to be taken out by each seller of plate, who shall sell any piece of plate, or goods, or any ware in which the gold or silver shall be of the respective weights hereinafter mentioned, or of any greater weight, and by all pawnbrokers trading in, vending or selling gold or silver plate, or any goods or wares in which any gold or silver is or shall be manufactured, and all refiners of gold or silver.

The quantities requiring the higher licence.

Sect. 3.—No person, by himself, or by any other person whatsoever employed by him, for his benefit, either publicly or privately, to sell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of thirty ounces or upwards, unless he shall have first paid a duty of 5*l.* for a licence, and every such person shall pay the like duty of 5*l.* for every licence which shall be taken out in each year, instead and in lieu of the duty of 40*s.* And if any person selling plate shall presume or offer to trade in, vend,

Penalty.

or sell any such piece of plate or goods or any such ware as aforesaid, without first taking out a licence, for which the said duty of 5*l.* shall have been paid, and renewing the same licence, and making the like payment yearly as aforesaid, he shall forfeit for every such offence 20*l.*

Pawnbrokers dealing in plate, and refiners, not having licences.

Sect. 4.—No pawnbroker shall presume, by himself, or by any other person whatsoever employed by him, for his benefit, either publicly or privately, to trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver is or shall be manufactured; nor shall any person presume, either by himself, or by any other person whatsoever employed by him, for his benefit, to use or practise the trade or business of a refiner of gold or silver without first taking out a licence, in such manner as persons using the trade of selling or vending gold or silver plate; and every such pawnbroker, and also every such refiner, shall take out a fresh licence in every year; and every such pawnbroker and refiner shall be deemed, for the purposes of this Act, to use the trade of selling or vending gold or silver plate, and shall pay a duty of 5*l.* for every licence: and if any pawnbroker shall presume or offer to trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver is or shall be manufactured; or if any person shall presume or offer to use or practise the trade or business of a refiner of gold or silver, and such pawnbroker or person respectively shall not have first taken out a licence, for which the said duty of 5*l.* shall have been paid, or shall not have renewed the same, he shall for every such offence forfeit 20*l.*

Penalty 20*l.*

Sect. 6.—Same provision as to persons in partnership, and the places where licences shall authorize parties to deal, as 31 Geo. II. c. 32, s. 7.

Sect. 7.—Penalties to be recovered and applied as by the 31 Geo. II.

Mitigation of penalties.

Sect. 8.—Provided always, that the penalties under the said Act, and this Act, may be mitigated as any penalty may be mitigated by any law or laws of Excise.

43 Geo. III. c. 69.

Present duties.

Repealing the former duties of excise and granting others in lieu.

For the duties on licences to sell plate, see TABLE, title "LICENCE."

53 Geo. III. c. 103.

Reciting the 43 Geo. III. c. 69, as to licences under Excise Laws.

Where party licensed dies or removes.

Upon the death of any person licensed, or his removal from the house in which he was authorized to trade, the Commissioners of Excise, or their collectors or supervisors, may authorize the executors, administrators, wife or child of the deceased, or the assignee of any person so removing, to trade in the commodities mentioned in such licence, in the same house or premises, for the term of the licence, without a fresh licence.

55 Geo. III. c. 30.

Additional duties (temporary).

By this Act *additional* duties (of the same amount) on licences to deal in plate were granted till the 5th of April, 1819.

59 Geo. III. c. 32.

Continued.

The additional duties continued till the 5th of July, 1822.

Certain dealers not liable to these duties.

Sect. 2.—Dealers in watches, who do not deal in any other plate, or any other goods of the lesser weights respectively, not to be liable to the additional duty of the lower amount for a licence under the 55 Geo. III. c. 30.

What shall be deemed gold or silver.

Sect. 3.—For obviating disputes as to the quantity or weight of gold or silver contained in any article, all goods, wares, and merchandise sold or offered for sale, or taken in pawn, or delivered out, as or for gold or silver, shall be deemed and taken to be gold or silver within the intent and meaning of the 55 Geo. III. c. 30, the 48 Geo. III. c. 69, and all other Acts now or hereafter relating to the excise revenue.

3 Geo. IV. c. 27.

Additional duties continued.

The additional duties continued till the 5th of July, 1826, (when they were permitted to expire.)

Excise licences to authorize the dealing in one house only. Repealed.

Sect. 2.—No one excise licence to authorize any person required by law to make entry at the Excise Office of the place where he carries on his trade, to deal in any commodity mentioned in such licence at more than one place, or in any house, &c., other than that, or the contiguous one, held together, whereof entry is so made, and wherein he deals at the time of granting the licence.

3 Geo. IV. c. 67.

The last clause repealed.

Repealing the last-mentioned clause as to dealing in more than one house, &c.

6 Geo. IV. c. 118.

The duties to be transferred from Excise to Stamps.

Sect. 1.—The duties upon gold and silver plate in Ireland and upon licences to sell or make gold or silver plate, and to hawkers and pedlars and post-masters in Ireland, transferred from the Excise to the Commissioners of Stamps.

Sect. 2.—The duty on licences to deal in gold and silver plate in Great Britain to continue in force and be paid and payable to and be under the management of the Commissioners of Stamps, and be denominated and deemed to be stamp duties.

What shall be deemed gold and silver.

Sect. 3.—For obviating disputes touching the quantity or weight of gold or silver contained in any ware or piece of goods in Great Britain, all goods and wares sold, or offered for sale, or taken in pawn, or delivered out as for gold or silver in Great Britain, shall be deemed and taken to be gold or silver respectively, within the intent and meaning of this Act, and any other Act or Acts. Provided that gold or silver lace, wire, thread, or fringe shall not be deemed gold or silver plate, nor require a licence for dealing therein.

Gold lace, &c.

The Commissioners of Stamps may exercise all the powers, &c., as the Commissioners of Excise might have done.

Sect. 4.—All the powers and authorities, rules, regulations, and directions, in any wise relating to the said duties upon gold and silver plate, and the granting of such licences, or to the duties upon or in respect of such licences, contained in any Acts relating thereto (except so far as the same shall be inconsistent with this Act), shall be used, executed, exercised, and put in force, for securing and collecting such duties, by the Commissioners of Stamps in Great Britain and Ireland respectively; who may grant all such licences, and manage all such duties as the Commissioners of Excise might have done. And

all fines, penalties, and forfeitures relating to such duties, shall be incurred, and may be sued for, &c., in respect of any act, matter, or thing relating to the duties and licences by this Act placed under the Commissioners of Stamps.

Sect. 5.—All the powers, provisions, regulations, and directions, fines, forfeitures, pains and penalties contained in any Act in force in Great Britain and Ireland respectively, in relation to stamp duties, so far as the said Acts can be made applicable to the duties on such licences, shall be of full force and effect, and be observed, applied, enforced, and put in execution with respect to the duties by this Act placed under the said Commissioners, and the vellum, parchment, and paper on which any such licences shall be granted, as if the same were repeated in this Act. The provisions, &c., of Stamp Acts to be applied.

9 Geo. IV. c. 49.

Sect. 12.—Licences to deal in plate granted after the 31st July, and before the 1st of September in any year, to be dated on the 1st of August; those granted at any other time to be dated on the day on which they are granted. Every such licence to have effect and be in force from the day of the date thereof until and upon the 31st July then next following. Date and termination of licences.

8 Vict. c. 15.

Sect. 6.—Auctioneers having an excise licence under this Act not to be required to have a separate licence for selling plate by auction. Auctioneers exempt.

12 Vict. c. 1.

By this Act all duties under the Commissioners of Stamps and Taxes are placed under the Commissioners of Inland Revenue. See "STAMPS."

Ireland.

The statutes relating to licences for dealing in gold and silver plate in Ireland are the 55 Geo. III. c. 19; 6 Geo. IV. c. 118; and 5 & 6 Vict. c. 82. See "APPENDIX."

THE PERSONS who are required to be licensed for selling plate are those who *deal* in it; a single act of selling by a person who is not a trader in such articles does not involve the necessity for a licence. The defendant in the case of *The King* v. *Buckle* (*a*) was convicted before a magistrate, under the 31 Geo. II. c. 32, and 32 Geo. II. c. 24, for selling silver plate without a licence, on proof, that, at his house, he sold an old silver tankard for 8*l.*, which the silversmith, who weighed it, said was worth that money Dealers only, required to take out licence.

(*a*) 4 East, 346; 1 Smith, 49.

for use, though he, as a tradesman, would only give seven guineas for it. The conviction was confirmed on appeal, subject to the opinion of the Court, whether the selling of one single article of plate constituted the defendant a trader, within the meaning of the 31 Geo. III. c. 32. The Court held the case to be too clear for argument; the 6th section showed that the penalty was not meant to attach on any person but those who used the trade of vending plate.

Neither the spirit, nor the letter of the enactments, warrants such an interpretation as that attempted to be put upon them by the magistrates in the foregoing case. The persons requiring licences are, expressly, declared to be those "using the trade of selling or vending gold or silver plate;" and an act, or repeated acts of selling plate, of which a person is possessed for private use, cannot be said to constitute such a person a dealer within the meaning of the statutes.

The case of a shopkeeper, or person carrying on the business, or holding himself out as a trader by exposing goods for sale, is very different; there, general evidence, coupled with proof of a single instance of selling, in the ordinary course of business, would be sufficient to show the party to be using the trade of selling or vending plate; so, also, with a pawnbroker, a single act of dealing, in the ordinary pursuit of his calling, would, of course, be quite sufficient to establish his liability.

Policy. See "INSURANCE."

Postage Stamps.

2 & 3 Vict. c. 52.

Sect. 1.—The Treasury may, by warrant to be published in the London Gazette, alter, fix, reduce, or remit all or any of the rates of British or inland or other postage, and subject such letters to rates of postage according to the weight thereof. Treasury may reduce postage of letters.

Sect. 5.—The Treasury may by warrant direct that letters written on stamped paper or enclosed in stamped covers, or having a stamp affixed thereto, (the stamp being of the value or amount to be expressed, and provided for the purpose,) shall, if within the limitation of weight to be fixed under this Act, and if the stamp have not been used before, pass by the post free of postage. Stamped covers.

Sect. 6.—The Treasury may direct the Commissioners of Stamps and Taxes to provide dies for denoting the rates or duties directed by any such warrant. Dies.

Sect. 7.—A separate account to be kept of the stamp duties arising under this Act; and such sums to be paid over to the post office as the Treasury shall direct.

Sect. 8.—The rates or duties to be expressed by any such dies to be deemed stamp duties, and be under the care of the Commissioners of Stamps and Taxes; and all the powers, provisions, &c., of Stamp Acts to be applied.

Sect. 14.—Warrants issued under this Act to cease on the 5th October, 1840, unless Parliament declare to the contrary.

3 & 4 Vict. c. 96.

Sect. 2.—Letters transmitted by the post to be charged by weight according to the scale set forth in the Act. Postage by weight.

Sect. 12.—All letters posted in any place within the United Kingdom, if written on stamped paper or enclosed in stamped covers, or having a stamp or stamps affixed thereto, and all printed votes and proceedings of the Imperial Parliament, and all newspapers liable to postage under this Act, (the stamps being affixed or appearing on the outside, and of the value or amount in this Act expressed and specially provided under the authority thereof or of the said Act, and not used before,) to pass by the post free of postage. Stamped covers.

Sect. 19.—The Commissioners of Stamps and Taxes to provide dies or other implements for expressing rates or duties of one penny and two-pence, or of any other value as may be directed by the Treasury, for the purposes herein mentioned; and may use for the like purposes any dies, plates, or other implements which have been provided under the said Act. Dies.

Sect. 20.—A separate account to be kept of the stamp duties arising under this Act; and the Treasury may from time to time direct the Commissioners to authorize their Receiver-General to pay over such sums arising from the said duties as the Treasury shall think proper to the account of the Receiver-General of the post office at the bank of England; to be held subject to all annuities and yearly sums now charged by law on or payable out of the post office revenue, and other outgoings. Separate accounts to be kept.

Sect. 21.—The said duties to be denominated and deemed to be stamp du- Duties to be

deemed stamp duties

Provisions of Stamp Acts to be in force Discount

ties, and be under the care of the Commissioners of Stamps and Taxes, and all the powers provisions, &c, contained in the Acts relating to stamp duties (so far as applicable, and consistent), in all cases not hereby expressly provided for, to be of full force and effect with respect to the stamps to be provided under this Act, and to the paper, and be observed as if herein repeated provided, the Commissioners not to allow discount unless directed by the Treasury

Forgery

Sect 22 —As to forging dies and other offences relating to counterfeit stamps, see "FORGERY"

For punishing evasion of duties

Sect 23 —If any person shall fraudulently get off or remove, or cause or procure to be gotten off or removed from any letter or cover, or any paper or other substance or material, the stamp or impression of any die, plate, or other instrument provided made, or used, or hereafter to be provided, made, or used by or under the direction of the Commissioners of Stamps and Taxes, or by or under the direction of any other person or persons legally authorized in that behalf, for the purpose of expressing or denoting any of the rates or duties directed to be charged under the said Act, or this Act, with intent to use join, fix, or place such stamp or impression for, with, or upon any other letter cover, paper or other substance or material, or if any person shall fraudulently use, join, fix, or place for, with, or upon any letter or cover, or any paper or other substance or material, any such stamp or impression as aforesaid which shall have been gotten off or removed from any other letter, cover, paper, or other substance or material, or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from, or shall cause or procure to be so erased, cut, scraped, discharged, or gotten out of or from any letter or cover, or any paper, or other substance or material any name, date, or other matter or thing thereon written printed, or expressed with intent to use any stamp or mark then impressed or being upon such letter or cover, paper, or other substance or material, or that the same may be used for the purpose of defrauding her Majesty of any of the rates or duties aforesaid, or if any person shall make, do, or practise or be concerned in any other fraudulent act contrivance, or device whatever, not specially provided for by this or some other Act of Parliament, with intent or design to defraud her Majesty of any of the rates or duties aforesaid, every person so offending shall forfeit 20*l*, to be recovered with full costs of suit and all expenses attending the same

Manufacture of paper for envelopes

Sect 26 —The Commissioners of Excise, or such persons as the Treasury shall direct, shall cause to be provided such moulds, &c, as may be necessary for the making of paper to be used as covers, or envelopes, or stamps, and to receive the impression of the dies, plates, or other instruments provided by the Commissioners of Stamps and Taxes for denoting any of the rates or duties of postage, which paper shall have such distinguishing words, letters, figures, marks, lines threads, or other devices worked into or visible in the substance of the same as the said Commissioners of Excise, or such other persons shall direct, and all the paper so made shall, as the same is required, be delivered over to the Commissioners of Stamps and Taxes, or to such officer or warehouse keeper as such last-mentioned Commissioners shall direct to receive and take charge of the same

10 & 11 Vict. c 85

For giving further facilities for the transmission of letters by post, &c

Sect 9 —The Commissioners of Stamps and Taxes to provide dies for denoting postage duties under this Act, or any Treasury warrants under the provisions of the Act, &c

Progressive Duties.

PRIOR to the 37 Geo. III. c. 19, the stamp duties were, for the most part, imposed on every skin or piece of vellum, or parchment, or sheet or piece of paper upon which any of the matters, in respect of which they were granted, were written; but, by that Act, a separate progressive duty for every given additional quantity of words, beyond a specified number, was charged, and has been so in, nearly, every instance, since; previously, therefore, to the introduction of this latter mode, it was necessary, in order to prevent evasions of the duty, to prohibit the writing of more than a certain quantity of words in a skin, &c., which was, at first, done, by merely enacting that all deeds, instruments, and writings should be engrossed and written as they had been accustomed to be. This custom, so far as deeds and such like instruments are concerned, is explained in the 19 Geo. III. c. 66, which recites, that till the last preceding stamp duties were imposed, it was the general practice to insert in one skin of parchment twelve chancery sheets, containing 90 words each, or 15 common law sheets, containing 72 words each; and that the same had been held a fair and reasonable quantity. It seems, however, to have been a complaint, that this practice had been broken in upon, by inserting in one skin the contents of a greater quantity of sheets, and charging double or treble the usual sum for drawing and engrossing such skins, calling the same double and treble skins, whereby "the clients, instead of judging of such charges by the number of skins, were liable to be imposed upon, and the revenue materially injured and diminished." To remedy this grievance on the part of the Crown, attorneys, solicitors and other persons, were, by the last-mentioned Act, prohibited, under a penalty, from charging otherwise than by the skin, and for more sheets in a skin than they were obliged to insert, or than were usually inserted.

As regards Scotland, it was by the 26 Geo. III. c. 48, provided that no skin, &c., should be divided into more than four pages, with 36 lines in each, and nine words in a line, under a penalty of 10*l.* for writing any greater quantity of words in a skin, or in any other manner, so as to insert in one skin, &c., more than 1236 words.

37 Geo. III. c. 19.

A stamp to be impressed for every fifteen folios.

Sect. 1.—The number of stamps required to be put upon every skin, &c., shall be calculated according to the number of common law sheets written thereon, *viz.* Where the quantity of words shall not exceed fifteen sheets, one stamp; where it shall amount to thirty, two stamps; and so progressively, one stamp for every fifteen sheets. Provided, that if the quantity, after calculating every amount of fifteen sheets, exceed the number of such sheets by a less quantity than fifteen sheets, no stamp shall be required for the excess.

Schedules, &c. annexed.

Sect. 2.—Every schedule or other instrument annexed to any indenture, &c., shall, in estimating the number of stamps required, be deemed a part of such indenture, &c.

Penalty for writing, deeds, &c., otherwise than according to this Act.

Sect. 3.—If any attorney, solicitor, clerk, or other person write or cause to be written any indenture, &c., on vellum, parchment, or paper, not duly stamped according to the directions of this Act, and shall neglect to bring the same to be duly stamped in the manner and within the time hereby directed and allowed, he shall forfeit 20*l.*; and no such indenture, &c., shall be pleaded or given in evidence, or be good, useful, or available, in any manner whatever, unless the same shall have been stamped as required by this Act.

Deeds, &c., having a stamp on every skin, but not stamped as hereby required, may be stamped on payment of the duty within a month.

Sect. 4.—Every indenture, lease, bond, or other deed which shall have been stamped with one stamp on every skin or piece of such vellum or parchment, or on every sheet or piece of paper before any manner of thing shall be written thereon, and shall not be stamped as by this Act is directed, which shall be brought at any time before the execution thereof, or within one calendar month after the date thereof to the head office for stamps, may be stamped as this Act requires on payment of the duty for the same; and thereupon the officer appointed by the Commissioners shall calculate the duty thereon, and the number of stamps required, and write upon the margin the number of sheets therein, and the day on which payment is made, and subscribe the same; and in case the duty is paid at the head office, the indenture, &c., shall be then stamped, but if at any other office appointed by the Commissioners, the indenture, &c., shall be transmitted to the head office to be stamped within twenty-one days; and if the person paying the duty require it, the indenture, &c., shall be transmitted by the officer, and then stamped and returned to the officer to be re-delivered to the party, the officer in the mean while giving an acknowledgment for the deed.

Within six months on payment of the duty and 10*l.* Afterwards, the duty and 10*l.* for every skin.

Sect. 5.—Provided, that any such indenture, lease, bond, or other deed may, at any time within six calendar months after the date thereof, be brought to the said head office to be stamped in like manner, paying the duty for the same and a further sum of 10*l.* by way of penalty; and, also, at any other time after the expiration of the said six months, on payment of the duty for the same and the further sum of 10*l.* for every skin or piece of vellum or parchment, or sheet or piece of paper whereon such indenture, lease, bond, or other deed, matter or thing aforesaid shall be engrossed, printed or written, by way of penalty for not having before caused the same to be duly stamped according to the directions of this Act.

Actions for penalties not to be barred by getting the deeds stamped.

Sect. 6.—Provided, that where any action shall be commenced for writing any indenture, &c., contrary to this Act, which shall not be brought to be stamped within one calendar month, and such action shall be prosecuted with effect, the same shall not be delayed, prejudiced, defeated, or barred, by reason of the payment of any duty or penalty on stamping the same, or of the same being stamped after the commencement of such action.

Adding to deed after duty calculated.

Sect. 7.—If any person add any word in any indenture, &c., after the officer has calculated the duty, and before the same is stamped, or alter any word or letter written by the officer, or publish as true such indenture, &c., with any such addition or alteration, he shall forfeit 100*l.*

Provisions of former Acts.

Sect. 8.—All powers, provisoes, articles, &c., in former Acts, and not hereby

altered, to be of full force with relation to the matters and things hereby directed.

Sects. 9 & 10.—As to the recovery and application of penalties incurred under this Act, see 44 Geo. III. c. 98, ss. 10 & 27, and "PENALTIES."

Sect. 12.—So much of the 19 Geo. III. c. 66, as relates to the writing on any skin, &c., of any indenture, &c., for which other provision is hereby made, to be repealed. 19 Geo. III. c. 66, repealed.

37 Geo. III. c. 90.

Granting additional duties.

Sect. 7.—The same provision as in the last-mentioned Act for calculating the number of stamps on any indenture, lease, bond, or other deed, or any agreement charged with duty under this Act.

Sect. 8.—The same, as to attested copies of indentures, leases, and other deeds (on which a duty is charged by this Act), except that a stamp is to be impressed for every ten common law sheets. Attested copies.

Sect. 9.—All provisions, rules and matters prescribed by the said Act to be extended, applied and put in practice for stamping indentures, leases, bonds, deeds, agreements and copies charged under this Act; with the like penalty of 20*l.* for writing any unstamped agreement or copy, and neglecting to bring the same to be stamped within the time allowed by the said Act; and with the same provision as to its invalidity. The provisions of the last Act to be applied.

44 Geo. III. c. 98.
48 Geo. III. c. 149.
55 Geo. III. c. 184.

By these Acts, respectively, progressive duties were imposed according to the quantities of common law folios contained in any deed, &c.; see the TABLE for those now payable under the last-mentioned Act. With one or two exceptions, these duties are either 1*l.* or 1*l.* 5*s.* for every entire quantity of 15 folios over and above the first quantity; the former rate being payable, generally, in the case of any instrument charged with *ad valorem* duty; but this rule not being uniform, the TABLE is referred to, for information under every particular head. Present progressive duties.

THE mode of formerly charging, what are now termed, progressive duties, or followers, *viz.*, by repeating the same duty upon every skin or piece of vellum, parchment or paper, upon which the instrument was written, is continued only in a few instances; and in these, where they relate to documents of a public or official character, it is conceived that the old law, which provides that deeds, instruments and writings shall be engrossed and written in

such manner as they have been accustomed to be, must be considered to apply (*a*).

A fancied obscurity in the clauses imposing progressive duties in the Schedule to the Stamp Act, not unfrequently gives rise to inquiry, at the Stamp Office, as to the number of stamps required to be used for a definite quantity of words; the supposed difficulty being, the mode of computation. It is, certainly, scarcely possible to frame a sentence which should be, in terms, less equivocal than the clauses relating to these duties; and as no other form of words that can be devised will convey, more clearly, the intention, than that which is made use of, no interpretation can, really, be requisite; any person, therefore, seeking information, is referred to the Act itself, with an intimation, merely, to give due effect to the words "for every *entire* quantity."

What words be counted

Another question of more frequent occurrence is, as to the words that are to be counted in estimating the progressive duties on an instrument; every "schedule, receipt, or other matter put or indorsed thereon, or annexed thereto," being required to be included. These words must, necessarily, have a limited interpretation; they cannot be considered as referring to matter foreign to and unconnected with the instrument itself.

Indorsement of names of parties, &c.

The indorsement on a deed of the date, names of the parties, and purport of the instrument, &c., forms no part of it, and is to be excluded. A deed containing 3230 words, being only one *entire* quantity of 1080 words, or 15 folios, over and above the first, was stamped with one progressive duty; but, inasmuch as the words of the indorsement, if included, would increase the number to two such entire quantities, it was contended that two progressive stamps were necessary; but the Court held that, for the purpose of the stamp duty, the indorsement formed no part of the deed (*b*). See also *Lord Dudley and Ward* v. *Robins* (*c*), where the indorsement on a printed particular of sale (together with a page of letter press, which, it is presumed, was foreign to the contract in the case) was, also, excluded.

Figures.

Figures are to be counted as words, as held in the last case.

Receipt for penalty.

A receipt for the penalty paid on stamping an instrument, written upon it at the Stamp Office, is not to be included (*d*). As well might the words of the stamp itself be reckoned

(*a*) See *Doe dem. Irwin* v. *Roe*, 1 D. & R. 562, in which copies of the declaration were set aside, being written on both sides of the paper contrary to the practice.

(*b*) *Winder* v *Fearon*, 4 B. & C. 663.

(*c*) 3 C. & P. 26

(*d*) *Bowring* v. *Stevens*, 2 C. & P. 337.

Signatures.

An opinion is now and then asked whether the signatures of the parties and of the attesting witnesses are to be counted. It is difficult to conceive a reason for excluding them; and if the writer had not been aware, from the circumstance of information being sought upon the point, that doubts had been suggested in the minds of some persons, he would not have thought it necessary to allude to it. Perhaps the case of *Linley* v. *Clarkson* (*e*) may be referred to as an authority, if any should be desired.

Papers annexed.

Whatever is annexed to an instrument, to be read as a part of it, whether reference is made to it in the instrument itself, or not, is to be reckoned; thus, where three persons, engaged in the same line of business, agreed not to interfere with each other in selling in certain districts, as set forth in Bowles's map of England and Wales, which was annexed to the agreement, it was held, by Mr. Justice *Bosanquet*, that all the names of places on the map must be counted (*f*).

The case of *Pearce* v. *Cheslyn* (*g*) is no authority in any way as to progressive duties; but it may be observed, that if, in that case, the quantity of words in both papers had amounted to thirty folios, or upwards, the payment of a progressive duty would have necessarily followed.

Separate instrument, duly stamped, annexed.

Again, a writing, although properly stamped as a separate instrument, must, if annexed to and forming part of another, be counted, in estimating the duties on the latter. In the case of *Veal* v. *Nicholls* (*h*) an agreement, containing, itself, 1056 words, was stamped with 20*s*.; but there was annexed to it, an *inventory*, stamped as such, which, with the agreement, together, exceeded 1080 words; it was stated not to have been annexed when the agreement was signed, although it was referred to in the agreement, as annexed. It was held by C. J. *Tindal*, that the circumstance of the inventory being, substantively, stamped made no difference. He was of opinion that the inventory must be considered as annexed to the agreement, and that the latter was not, therefore, properly stamped; the parties spoke of the inventory in the agreement, as annexed, and they were estopped from saying that it was not. It is presumed that the inventory in this case was stamped with the duty of 25*s*. under the head "Schedule;" such a document is only charged, specifically, under that title.

Clauses re-

The distinction between this last case and a previous one of

(*e*) 3 Tyr. 352; 1 C. & M. 436; and see page 334, *ante*.

(*f*) *Wickens* v. *Evans*, 4 C. & P. 359.

(*g*) Page 356, *ante*.

(*h*) 1 Moo. & R. 248.

ferred to in instrument in dorsed.

Attwood v. *Small* (*i*), is not readily perceptible. In that case three agreements were made relating to the sale of lands; the two first were properly stamped; the third referred to the second, on which it was indorsed, and provided, that certain clauses in the latter should extend to such third agreement, as if the same had been repeated therein. This third agreement was stamped with 20*s*. It was objected, that, inasmuch as, with the addition of the matter referred to, the words would exceed 1080, although without such addition there was less than that quantity, it was insufficiently stamped; but the Court held, that the words of the clauses of reference not being in the instrument, nor in any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, the stamp was sufficient.

The fact having been disposed of, the law followed as of course. The Court held that the matter which, by reference, had been, in effect, incorporated into the agreement, was not therein, nor indorsed or annexed; or, in the words of the report, was not "in any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto." It is, certainly, somewhat difficult to reconcile this conclusion of the Court with the fact. Perhaps, as the last agreement was indorsed on the second, the Court considered that the writing in the second could not be said to be put or indorsed on the other, or annexed thereto, without an unauthorized inversion of the terms of the enactment. This mode, however, of escaping from the difficulty is anything but satisfactory.

A recent case of *Weedon* v. *Woodbridge* (*k*) can, scarcely, be said to be entirely satisfactory, more, however, by reference to the interlocutory observations of the Court, in the course of the argument, than the judgment, subsequently delivered. No reasons for the judgment are given; and inasmuch as the result is not, perhaps, inconsistent with an argument that might fairly have been addressed to the case, it may be treated as not open to objection. The case was as follows, *viz.*: A lease had been granted, for a term of 21 years, at a rent of 420*l.*; before the expiration of the lease, it was agreed, that in consideration of certain improvements made by the lessor, an additional rent of 25*l.* should be paid during the remainder of the term; and the mode by which this was carried out, was by an indorsement, on the original lease, of a demise of the premises to the lessee for the residue of the term, subject to the provisoes, covenants, and agreements contained in such lease; yielding

(*i*) 3 C. & P. 208; 7 B. & C. 390. (*k*) 13 Jur. 630, note.

and paying the further rent of 25*l.* It was contended, that, in ascertaining the duty on the indorsed lease, the words of the original lease must be counted, and a progressive duty paid in respect of them; but the Court thought that the stamp on the second instrument was not insufficient for that reason; nor that the stamp on the original lease was affected by the subsequent instrument, because it was not indorsed on, or annexed to the original lease, within the meaning of the Stamp Act.

Here, not only were both the original lease and the indorsement co-existing, substantive instruments, but the latter, so far as it purported to be a demise, was mere surplusage, and, it may be said, inoperative; it amounted, in effect, merely to an agreement to pay an additional rent; and, for the purpose of giving such effect to it, there was no necessity for considering it as incorporating the instrument upon which it was indorsed; nor for requiring a progressive duty to be paid upon it, any more than in the case of a transfer of mortgage indorsed upon the original mortgage; or of an appointment of new trustees of settled property indorsed upon the settlement. The judgment, therefore, may, perhaps, be looked upon as well founded. But, during the argument, Mr. Justice *Coleridge* observed, that "the Stamp Act assumes that the principal instrument is in existence when the indorsement or annexation is made;" the meaning of which is not very clear in a general point of view. Applying it to the particular case it would seem to be consistent with the decision in *Attwood* v. *Small*, and open to the remark made by the writer thereon. It goes to an extent which the learned Judge never contemplated, and which would be too absurd to need any observation. With regard to the judgment that the stamp on the original lease was not affected by the subsequent instrument, no suggestion calling for any such decision appears, from the report of the case, to have been made at the bar; and, indeed, any such proposition could never have been seriously contended for.

The special provision for subjecting to the progressive duty writings annexed, or indorsed, might be considered, for the most part, unnecessary; such writings forming, as they do in most instances, if not always, a portion of the principal instrument; and which there could be no pretence for excluding in computing the duty. In an old case of *Lake* v. *Ashwell* (*l*), a bill of sale of goods, made as a security, had, annexed to it, an inventory of the goods; this inventory was stamped as a separate instrument, under the

Inventory annexed stamped as separate instrument.

(*l*) 3 East, 326.

37 Geo. III. c. 90, and a previous Act, under the head of "Inventory, or catalogue of any furniture, goods or effects made with reference to any agreement, or for the security of any person, *not otherwise charged;*" but the Court held that being annexed to the deed it was a part of it, and should have been stamped accordingly, and that, therefore, it was *otherwise charged.* This case was decided before progressive duties, of the present description, were payable, and when the same amount of stamp duty was charged on every skin, or piece of vellum or parchment, or sheet or piece of paper on which an instrument was written; and, therefore, the inventory, which consisted of four sheets of paper, one of which, only, was stamped with the duty on an inventory, should have borne, on every sheet, the same duty as was on the bill of sale itself. The duty, specifically imposed, on an inventory, was charged under circumstances similar to those now payable under the head "Schedule;" but it may be remarked that, even looking upon the inventory in question as a separate instrument, it was insufficiently stamped, as the inventory duty, as well as the duty on other instruments, was charged on every sheet, this was not, however, adverted to.

Writing not annexed.

If a writing be referred to, in an instrument, as containing the terms of agreement or otherwise, but it be not annexed, it is not to be counted as part of such instrument. Although this would seem not to admit of a question, yet that such a writing ought to be counted was contended for in a case of *Sneezum* v. *Marshall* (*m*), where an agreement was made for the sale of certain property, subject to the covenants set forth "in a draft of a lease, delivered this day"

It must not, however, be considered that no duty is payable in respect of the paper writing referred to; such a writing may be chargeable under the head "Schedule," in the Stamp Act.

Party objecting must prove the number of words in the instrument.

As well in the case of progressive as any other stamp duty, it is incumbent on the party objecting to any instrument for want of a proper stamp to show the deficiency; this can only be done, in reference to the progressive duty, by proving the number of words the instrument contains; the objector, therefore, in order to sustain his position, must be prepared with a witness who can prove that he has counted the words, and can state the number (*n*).

Or in a copy.

If, however, the witness can only state that he has counted the

(*m*) 7 M. & W 417, 9 Dow. 267; 10 L. J. R (N. S) Exch 193.

(*n*) *Bowring* v. *Stevens*, 2 C. & P. 337.

words in a counterpart or a copy, affording reasonable evidence of the quantity of words in the original, the Court, where such quantity is more than the stamps on the instrument will cover, will refer it to the officer to count the words. This was done in *Lord Dudley and Ward* v. *Robins* (*o*) by Lord *Tenterden*, where a counterpart was produced; and in *Price* v. *Bentley* (*p*), in which a copy, delivered under a Judge's order, had been counted. In the former case, another cause was called on whilst the officer was engaged in ascertaining the number of words; but Lord *Tenterden* refused to allow the instrument to be taken to the Stamp Office to be stamped.

Distinction between progressive duty, and the duty under the head "Schedule."

The progressive duty, and the substantive duty imposed on any writing referred to in an instrument, but not indorsed on or annexed to it, must not be confounded: but it would seem that learned writers on the stamp laws have not been careful to point out the distinction; if, indeed, it has not escaped their own notice; which there may be some reason for believing, seeing in what manner the cases upon the subject are alluded to.

Progressive duties are charged on writings which are annexed to an instrument, as on a part (which as before observed they, in fact, are) of the instrument itself; being computed on the aggregate number of words, counted, continuously, from the beginning to the end, including all the papers, and the amount of each stamp (whether 20*s*. or 25*s*.) depending on the instrument, and the principal duty to which it may be liable; but where papers are "*referred to*, in or by, and are intended to be used, or given in evidence as part of, or as material to any agreement, lease, tack, bond, deed, or other instrument charged with any duty, but which are *separate and distinct from*, and not indorsed on or annexed to such agreement, lease, tack, bond, deed, or other instrument," a substantive duty is imposed thereon, under the head "*Schedule, Inventory, or Catalogue*," in the Stamp Act, as on a totally independent instrument; such duty being in all cases 25*s*., with progressive duties of the same amount. This peculiar duty, it is manifest, is intended as a substitute for the progressive duty which would have been payable, if the papers had been annexed to the instrument to which they relate; but the distinction is material, not only with regard to the value of the stamps, and the mode of calculating the number that may be required, but to the penalties that may be payable on stamping the documents; the principal instrument and the subsidiary paper being, for this purpose, treated as distinct instru-

(*o*) 3 C. & P. 26. (*p*) 1 C. & P. 466.

ments, and involving, therefore, the payment of separate penalties. To come within the charge of this duty, however, the writing must be such as is further described under the head referred to, *viz.* :—a "Schedule, inventory, or catalogue of any lands, hereditaments, or heritable subjects, or of any furniture, fixtures, or other goods or effects; or containing the terms and conditions of any proposed sale, lease, or tack, or the conditions and regulations for the cultivation or management of any farm, lands, or other property leased or agreed to be leased, or containing any other matter or matters of contract or stipulation whatsoever; which shall be referred to," &c.

What is not a schedule.

A lease was made of land to be farmed according to a certain lease granted to other persons It was insisted that the lease referred to should have been stamped as a schedule, inventory, or catalogue, under the head alluded to; but the Court held that the lease, to which reference was made, did not come within the description of instrument so charged (*q*).

In this case every thing turned upon the meaning of the word "Schedule." It might be admitted that the instrument annexed was not an inventory or a catalogue; and if the other word, as used in the Act, is to derive its meaning from its juxta-position, and to be considered as *ejusdem generis*, then, perhaps, it was right to hold the writing in question not to be a schedule; but if the word is to have the signification attached to it which it possesses in its general character, then it is clear that such writing was a schedule.

Admission of principal instrument where schedule not stamped.

As a proof of the misapprehension existing as to the distinct nature of the progressive duties, and of the duty on a "Schedule," a note of the learned reporters to the case of *Atherstone* v. *Bostock* (*r*), may be alluded to. It is there observed that "upon a plea of *non est factum* to a declaration in covenant, if the indenture produced, with a 35*s*. stamp, contained less than 2160 words, it would be read in evidence for the plaintiff; although it referred to an unannexed schedule, the contents of which were unconnected with any of the breaches of covenant assigned; and that if the defendant produced the schedule, containing 10,000 words, for the purpose of showing that the indenture was insufficiently stamped, an objection that the schedule could not be read *for that purpose*, without a stamp, would, probably, not prevail." That is to say, that the schedule might be produced to show that the indenture

(*q*) *Strutt* v *Robinson*, 3 B. & Ad. 395.
(*r*) 2 M. & G 522.

was not sufficiently stamped, by reason of there being no stamp upon the schedule. This, however, is a mistake; the indenture would be, *per se*, properly stamped, and, *quoad* the stamp duty, would be admissible in evidence; but the schedule, for want of the stamp duties, specifically, charged upon it, could not be read, and the question would turn upon the admissibility of the indenture without the schedule. If, putting the stamp duties aside, effect could, in point of law, be given to the indenture, alone, the schedule being excluded, then no point could arise as to the want of stamp duty on the schedule, any more than on any unconnected, independent, instrument. See *Duck* v. *Braddyll* (*s*), where a deed was objected to, because certain inventories, to which it referred, were not stamped; the inventories were not given in evidence by either party, as was stated in the *case* upon which the points were argued; and, in reference to their not being stamped, the Lord Chief Baron (*Alexander*) said, "but that circumstance is not material; perhaps, not having been stamped, they could not be given in evidence, but they were not used in that way; and we cannot find any provision in the stamp laws which makes void a deed given in evidence, because it refers to inventories which are not stamped."

And in a recent case, on the trial of an interpleader issue, the plaintiff tendered in evidence a bill of sale and schedule, the former of which assigned to him "all the goods, fixtures, household furniture, plate, china," &c., in and about a certain house, the chief articles whereof were "particularly enumerated and described in a certain schedule hereunto annexed." The schedule was not annexed, and was inadmissible, as a separate document, for want of a stamp. At the trial, the Lord Chief Baron refused to admit the bill of sale, as incomplete, without the schedule. But, on a motion for a new trial, the Court held that the deed sufficiently described the property, and was admissible; the Lord Chief Baron observing, that if *Duck* v. *Braddyll* had been cited at the trial he should have admitted the deed without the inventory (*t*).

Again, in an action of covenant, on a deed which purported to assign certain goods, "as per schedule," and which contained a covenant for payment of 100*l.* on a certain day, it was objected that the deed could not be read, unless the schedule was produced, also; but it was held that the covenant was distinct, referring to

(*s*) M'Clel. 217.
(*t*) *Dyer* v. *Green*, 1 W. H. & G. 71.

nothing extraneous, and was wholly independent of all other matters. The Lord Chief Justice observed that, sometimes, a deed referred to other documents in such a manner that the production of them was necessary to establish and explain the principal instrument; but that if the case could be established independently of them, though they might be incidentally referred to, their production was not necessary (*u*).

See "INSTRUMENTS," IV. *ante*, page 356, as to the admission of writings referred to in subsequent documents without being stamped for their original purposes.

(*u*) *Daines* v. *Heath*, 16 L. J. R. (N. S.) C. P. 117; 3 M. G. & S. 938.

Promissory Notes. See "BILLS and NOTES."

Public Officers.

5 Will. & Mary, c. 21.

Sect. 11.—In case any clerk, officer, or person, who in respect of any public office or employment, is entitled or intrusted to make or write any records, deeds, instruments, or writings by this Act charged to pay a duty, shall be guilty of any fraud or practice to deceive their Majesties of any duty, by making, engrossing, or writing any such record, deed, instrument, or writing upon vellum, parchment, or paper, not stamped according to this Act, or upon which there is not some stamp resembling the same, or which is stamped with a known counterfeit stamp, or with a lower duty than is payable, he shall forfeit his office, place, or employment, and be disabled to hold or enjoy the same; and any attorney guilty of any such fraud shall be disabled for the future to practise as an attorney.—NOTE. A similar provision is contained in 9 Will. III. c. 25.

Public officer writing deeds, &c., without stamps, to lose his office.

1 Anne, stat. 2, c. 22.

Sect. 1.—Any clerk, officer, attorney, solicitor, or other person to whom it shall appertain to enter or file any action, plaint, bail, appearance, admission, or other matter or thing in respect whereof any duty is payable, neglecting to enter, file, or record the same within four months, &c., to forfeit 20*l.*

Neglecting to file any law proceeding.

Sect. 4.—No officer to be subject to any penalties, forfeitures, disabilities or incapacities for writing any of the matters or things aforesaid in any book or roll without stamps, which shall have been first shown to and signed by the Commissioners, or some authorized officer, to signify his or their leave or approbation that such matters and things may be therein written without stamps, so as such person do, when required, permit the Commissioners or their officer to inspect such book or roll, and do also pay all such sums which ought to be paid in respect of the matters and things written in such book or roll.

Certain matters may be written without stamps in books.

9 Anne, c. 23.

Sect. 27.—Any officer of customs signing a certificate or debenture for drawback not stamped to forfeit 10*l.* and his office; and be incapable of holding his office.—See "BILL OF LADING," &c.

Officer of Customs offending.

Sect. 28.—All public officers having in their custody any such debentures, or any public books, files, records, remembrances, dockets or proceedings, the sight or knowledge whereof may tend to the securing of any stamp duties, or to the proof or discovery of any fraud or omission in relation thereto, shall, at any seasonable time, permit any officer thereunto authorized by the Commissioners, or the major part of them, to inspect and view the same, and take notes and memorandums thereout, without fee or reward, on pain of forfeiting 5*l.*—See the next Act.

Books, &c., in the custody of public officers may be inspected.

5 Geo. III. c. 46.

Sect. 4.—If any town clerk, or other proper officer neglect or refuse to make the entry, minute, or memorandum of any admission into any corporation or company, upon the proper duty, in the Court book, or on the roll or record of

Admissions to corporations or companies.

the corporation or company within one month after such admission he shall forfeit 10*l.*

Further provisions as to inspecting books, &c.

Sect. 38.—All public officers who shall have in their custody any books, papers, files, records, remembrances, dockets, or proceedings, the sight or knowledge whereof may tend to the securing of any stamp duties, or to the proof or discovery of any fraud, or omission in relation thereto, shall, at any seasonable time, permit and suffer any officer thereunto authorized by the said Commissioners, or the major part of them, to inspect and view all such books, &c., and to take thereout such notes and memorandums as he shall see necessary, without fee or reward, upon pain of forfeiting for every such refusal or neglect, 50*l.*

31 Geo. III. c. 25.

Receipts may be written without stamps in books of public offices with the consent of the Commissioners.

Sect. 22.—No officer, or other person, shall be subject to any penalties, forfeitures, disabilities, or incapacities for writing, or accepting any receipts, discharges, or acquittances given to him or them in respect of any public office or employment, on any book belonging to any public office, or the office of any corporation or company, or in any court of law or equity in Great Britain, without any stamps thereon, which shall have been first shown to and signed by the Commissioners, or any three of them, or some officer by them for that purpose authorized and empowered, to signify his or their approbation or consent, (which the Commissioners may allow or refuse at their discretion,) that the receipts, discharges or acquittances to be written in such book may be therein written without any stamps thereon, so as the person having the custody of such book do, from time to time, (when thereto required,) permit the Commissioners or their officer to inspect and view such book, and do also, when required, pay to the Receiver-General of the said duties the sums which ought to be paid in respect of such receipts, discharges, and acquittances.

48 Geo. III. c. 149.

Officer enrolling bargain and sale not duly stamped, penalty 50*l.*

Sect. 28.—If any officer of any of the Courts at Westminster, or any clerk of the peace, or other person intrusted to enrol deeds of bargain and sale of estates of freehold in England, shall enrol any deed of bargain and sale, whereby any freehold lands or hereditaments shall be conveyed to any purchaser, or other person by his or her direction, unless such deed of bargain and sale shall appear to be stamped with the proper *ad valorem* duty charged on conveyances upon the sale of lands or other property, according to the amount of the consideration money therein expressed, or with some particular stamp for testifying the payment of the said *ad valorem* duty on a deed of release or feoffment of the same land or hereditaments, every such officer, or clerk of the peace, or other person so offending, shall for every such offence forfeit 50*l.*

Ireland.

The enactments relating to public officers in Ireland will be found in the 56 Geo. III. c. 56. ss. 56, 57, 98, 99, &c., and 5 & 6 Vict. c. 82, s. 33. See "APPENDIX."

Receipts.

23 Geo. III. c. 49.

24 Geo. III. c. 7.

By the former Act stamp duties were granted on receipts, or other discharges given upon the payment of money amounting to 2*l.* or upwards; and provisions for securing the duties were contained therein, and, also, in the latter Act.

31 Geo. III. c. 25.

By this Act the said duties, and all the powers and authorities contained in the said Acts for raising the same, and all penalties and forfeitures relating thereto, were directed to cease and determine.

Sect. 12.—New stamp duties on receipts, discharges, or acquittances for or upon the payment of money amounting to 40*s.* or upwards were granted, (with certain exemptions,) to be paid by the persons requiring the receipts, except in the case of money paid on account of his Majesty, in which cases the duties were to be paid by the persons giving the receipts. See 43 Geo. III. c. 126, s. 4.

Unstamped receipts in books.

Sect. 22.—Receipts may be written, without stamps, in books belonging to public offices, with the consent of the Commissioners. See "Public Officers," page 550, *ante*.

35 Geo. III. c. 55.

Granting additional duties on receipts given for sums amounting to 100*l.* or upwards.

Former provisions.

Sect. 4.—All the rules, regulations, methods, penalties, and forfeitures, in the 31 Geo. III. c. 25 contained, in relation to the former duties on receipts, for which other provisions are expressly made by this Act, to cease and determine.

Sects. 5, 6, & 7 contain directions as to what shall be deemed receipts, &c., which are superseded by 55 Geo. III. c. 184. See Table.

Penalty on persons signing, &c., receipts unstamped, &c.

Sect. 8.—All and every person or persons who from and after the 5th day of July, 1795, shall write or sign, or cause to be written or signed, any receipt, discharge, or acquittance, given for or upon the payment of money, liable to any stamp duty charged by the said Act (31 Geo. III. c. 25), or this Act, upon any piece of vellum, parchment, or paper, without the same being first duly stamped or marked with a stamp or mark as herein is directed, or upon which there shall be a stamp or mark of lower denomination or value than is by the said recited Act and this Act charged in respect thereof, shall forfeit 10*l.*, in case the sum paid, contained, or expressed in such receipt, discharge, or acquittance shall not amount to 100*l.*, and 20*l.* in case such sum shall amount to 100*l.* or upwards.

Giving receipts for less than actually paid, &c.

Sect. 9.—All and every person or persons who shall give any receipt, discharge, or acquittance, or any note, memorandum, or writing, acknowledging the payment of money, in which a less sum shall be expressed than the sum

actually paid or received, or who shall separate or divide the sum demanded or actually paid, or received, into divers sums, with intent to evade the said duties or any of them; or shall, with the like intent, write off any part of any debt, claim, or demand; or who shall be guilty of, or concerned in any fraudulent contrivance or device whatever, with intent or design to defraud his Majesty, his heirs or successors, of any of the said duties by the said Act or this Act imposed, shall for every such offence forfeit 50*l.*, to be recovered in manner hereinafter directed.

Paper to be stamped before written upon, and not afterwards, except as provided.

Sect. 10.—All vellum, parchment, and paper, liable to any stamp duty by the said Act or this Act, shall, before any of the matters or things thereby or hereby charged shall be engrossed, printed, or written thereupon, be brought to the head office for stamping; and the Commissioners shall stamp any quantities of vellum, &c., before any of the matters or things charged shall be written thereupon, upon payment of the duties; and no receipt, discharge, acquittance, note, or memorandum, or writing aforesaid, liable to the duties by the said Act or this Act imposed, or any of them, shall be pleaded or given in evidence in any Court, or admitted in any Court to be good, useful, or available in law or equity, unless the vellum, &c., shall be stamped or marked with a lawful stamp or mark to denote the rate or duty as by the said Act or this Act is directed, or some higher rate or duty; and the said Commissioners, or their officers shall not stamp or mark any vellum, parchment, or paper with any stamp or mark directed to be used or provided by virtue of the said Act or this Act, at any time after any receipt, discharge, or acquittance shall be engrossed, written, or printed thereon, under any pretence whatever, except as herein is otherwise provided; any thing in the said Act or this Act contained, or any law or statute to the contrary thereof notwithstanding.

In what cases receipts may be stamped.

Sect. 11.—Provided always that if any receipt shall be brought to the said Commissioners, or their officers, to be stamped within the space of fourteen days after the same shall be given, or shall bear date, the same shall and may be permitted to be stamped, on payment of 5*l.*, over and above the duty payable for the same; and if any such receipt be brought after the expiration of such fourteen days, and within one calendar month the same shall and may be permitted to be stamped, on payment of 10*l.*, over and above the duty payable for the same; and the proper officers are required, upon such receipt being brought to them within the respective times hereinbefore limited, and upon payment of the duty imposed thereon and the respective sums aforesaid, but not otherwise, to mark or stamp such receipt with the proper mark or stamp required for the same.

Sect. 12.—As to the appropriation of penalties, to be sued for in the superior Courts, see 44 Geo. III. c. 98, ss. 10 & 27.

Justices may determine offences.

Sect. 13.—Provided that any Justice of the peace residing near may hear and determine any offence against this Act, and upon any information exhibited, or complaint made within three calendar months after the offence committed, summon the party, and the witnesses, and upon due proof made, either by the confession of the party, or by the oath of one or more credible witness or witnesses, give judgment for the penalty, to be divided, one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to the informer or informers; and to issue his warrant, for levying the penalty on the goods of the offender, and to cause sale to be made thereof in case they shall not be redeemed within six days, rendering to the party the overplus (if any); and, where goods cannot be found, commit the offender to prison for three calendar months, unless the penalty be sooner paid; with permission, upon giving security to the amount of the penalty and such costs as shall be awarded in case such judgment shall be affirmed, to appeal to the next general or quarter sessions which shall happen after fourteen days next after such conviction, reasonable notice being given; the sessions to summon witnesses and finally hear and determine the same; and in case the judgment shall be affirmed, such Justices may award the person appealing to pay such costs occasioned by such appeal as shall seem meet.

Appeal.

Sect. 14.—Provided, that the said Justice may mitigate any such penalties as he shall think fit (reasonable costs and charges of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation), and so as such mitigation do not reduce the penalties to less than a moiety of the penalties incurred over and above the said costs and charges. Penalties may be mitigated.

Sect. 15.—If any person summoned as a witness neglect or refuse to appear his or her reasonable excuse for such neglect or refusal to be allowed of by the Justice, or appearing refuse to be examined and give evidence, he shall forfeit 40*s*., to be levied and paid as other penalties. Witnesses not attending, &c., to forfeit 40*s*.

Sect. 16.—As to the recovery of penalties after three months, see the general provision as to proceeding for penalties under the 44 Geo. III. c. 98, ss. 10 & 27, under "PENALTIES."

Sect. 18.—The provisions of former Acts relating to the stamp duties (and not hereby altered), to be of full effect, with relation to the duties hereby imposed. Former provisions.

43 Geo. III. c. 126.

Sect. 1.—Repealing the before mentioned duties on receipts, and granting others of the same kind in lieu, the highest duty being 5*s*., where the sum expressed to be received amounts to 500*l*. or upwards.

Sect. 3.—Every receipt, discharge, or acquittance, note, memorandum, or writing whatever, given to any person for or upon the payment of money which shall contain or express, or in any manner signify or denote, any general acknowledgment of any debt, claim, account, or demand, or all or any debts, claims, accounts, or demands being paid, settled, received, accounted for, balanced, discharged, released, or satisfied, or whereby any sum of money therein mentioned shall be acknowledged to be in full or in discharge or satisfaction of all or any such debts, claims, accounts, or demands, or intended so to be, and whether the same shall or shall not be signed by or with the name or names of the person or persons by or on whose behalf the same shall be given, shall be deemed and taken to be a receipt for the sum of 500*l*. and upwards within the true intent and meaning of this Act, and shall be liable to the stamp duty of 5*s*. by this Act imposed thereon; and no such receipt, discharge, or acquittance, note, memorandum, or writing shall be pleaded or given in evidence in any Court, or admitted in any Court to be useful or available in law or equity as an acknowledgment of any debts, claims, accounts, or demands being paid, settled, received, accounted for, balanced, discharged, released, or satisfied, whether generally or otherwise, or for any other or greater sum of money than the sum of money therein expressed, unless the same shall be stamped with the proper stamp to denote the said duty of 5*s*. hereby imposed; any thing in such receipt, discharge, acquittance, note, memorandum, or writing expressed notwithstanding. See the TABLE, as to what is to be deemed a receipt. What shall be deemed a receipt in full.

Sect. 4.—If any receipt shall, contrary to the true intent and meaning of this Act, be written on paper not stamped according to this Act, or which shall be stamped with a stamp of a lower value than is directed, there shall be due to his Majesty the full duty hereby chargeable thereon, and which shall be payable by all and every person or persons by this Act required to give any such receipt. Persons giving unstamped receipts liable for the duty.

Sect. 5.—Any person or any agent of any person from whom any sum or sums of money shall be due or payable, or claimed to be due or payable, and who shall have paid such sum or sums of money, may provide a piece of paper, vellum, or parchment duly stamped with the proper duty, and according to the amount of the sum or sums so paid as aforesaid, or some higher rate of duty, and demand and require of the person or persons entitled to such sum or sums of money, or any agent or agents to whom the same shall have been Penalty for refusing to give a receipt.

paid, a receipt, discharge, and acquittance for such sum or sums of money, and also the amount of the duty thereon; and if any person to whom any sum or sums of money shall have been paid shall refuse to give such receipt, discharge, and acquittance upon demand thereof, or pay the amount thereof as aforesaid, every such person shall forfeit 10*l.*

No receipt to be given in evidence unless duly stamped.

Sect. 6.—No receipt, discharge, or acquittance aforesaid, liable to the duties, shall be pleaded or given in evidence in any Court, or admitted in any Court to be good, useful, or available in law or equity, unless the vellum, parchment, or paper shall be stamped with a lawful stamp to denote the rate of duty as by this Act is directed, or some higher rate.

Sect. 10.—All receipts exempted from the duties imposed by former Acts to be also exempted from the duties imposed by this Act.—For present exemptions, see TABLE.

Former provisions.

Sect. 12.—The provisions of the said recited Acts, or any Acts relating to the stamp duties, (and not hereby altered,) to be of full force and effect with relation to the duties hereby imposed.

44 Geo. III. c. 98.

Repealing all former stamp duties and granting others in lieu, with a discount, (since repealed, see 9 Geo. IV. c. 27,) to stationers purchasing receipt stamps to the amount of 10*l.*, in consideration of their making no charge for the paper, but *bonâ fide* selling the same for the price of the stamps only, of 7*l.* 10*s.* *per cent.*; over and above the usual allowance (30*s.*) on the present payment of stamp duties to the amount of 30*l.* or upwards. The powers and provisions of former Acts continued. See 12 & 13 Vict. c. 80, *post.*

48 Geo. III. c. 149.

Repealing the duties granted by 44 Geo. III. c. 98 on receipts and certain other instruments, and granting new duties in lieu, and continuing the provisions of former Acts.

55 Geo. III. c. 184.

Present duties.

Repealing all the stamp duties granted by the 48 Geo. III. c. 144 and granting others in lieu, for which, so far as they are still payable, see the TABLE.

Sect. 8.—All former provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties contained in the several Acts relating to the duties hereby repealed, and to any prior duties of the same kind or description, to be of full force with respect to the duties hereby granted, and be applied for raising, levying, collecting, and securing the same.

9 Geo. IV. c. 27.

iscount.

Sect. 1.—The allowances of 30*s.* *per cent.* so far as the same relate to the duties upon receipts, and 7*l.* 10*s.* *per cent.* to be made to stationers on the purchase of stamps for receipts granted by the 44 Geo. III. c. 98, repealed. In

lieu thereof to every person who at one time shall buy of the Commissioners of Stamps, at their Head Office in London, stamps for receipts to the amount of 5*l.* or upwards, or of any distributor or sub-distributor, not within ten miles of the Head Office, to the amount of 1*l.* or upwards, an allowance to be made at the rate of 7*l.* 10*s. per cent.*: Provided that no allowance shall be made for any fraction of a pound. Repealed by 12 and 13 Vict. c. 80.

Sect. 2.—The Commissioners may, and are required to issue stamps for receipts upon paper provided by them, without making any charge for the paper.

Sect. 3.—The Commissioners of Stamps in such cases as they think proper may grant to any person who, at one and the same time, shall produce at the Head Office in London paper or parchment to be stamped for receipts to the amount of 5*l.* or upwards, on which any special form is printed, such form being applicable solely to the business of any one person or firm, the said allowance of 7*l.* 10*s. per cent.*

Sect. 4.—If any person upon the sale of any stamp or stamps for a receipt or receipts make any charge to the purchaser for the paper whereon the same is impressed, or, under any colour or pretence whatever, demand or receive a greater price or sum than the amount of the duty, such person shall forfeit 10*l.* Penalty on making charge for paper.

Sect. 5.—Not to be construed to extend to prevent any person from making any charge for any bound book containing stamps for receipts, or any folio sheet of paper containing not more than one stamp, or for any vellum or parchment whereon any such stamp or stamps may be impressed. Exceptions.

Sect. 6.—Indemnity to all persons against penalties heretofore incurred for giving receipts on unstamped paper. Indemnity.

3 & 4 Will. IV. c. 23.

Repealing the duties on receipts for sums not amounting to 5*l.* Repeal of duties for sums under 5*l.*

3 & 4 Will. IV. c. 97.

Authorizing the appropriation of stamps to particular instruments. See "Bills of Exchange," &c.

12 & 13 Vict. c. 80.

Repealing the discount granted by 9 Geo. IV. c. 27, and allowing the same discount, only, as on other stamps. See "Discount and Allowances."

Ireland.

For the enactments relating to receipt stamps in Ireland, see the 55 Geo. III. c. 100, ss. 11, *et seq.*, and 9 Geo. IV. c. 49 in the "Appendix."

Receipts cannot be stamped.

ONE incident peculiar, though not exclusively so, to receipts is, that, except as specially provided by the 35 Geo. III. c. 55, s. 11 (*a*), they cannot, under any circumstances, be stamped after they are written.

Exclusive dies for receipts.

Another peculiarity is, that particular stamps are appropriated for receipts, and that no others are available. Under the 3 & 4 Will. IV. c. 97, the Commissioners of Stamps and Taxes have provided certain dies for denoting the duties on receipts, such dies having thereon the word "Receipt," and also certain figures intended to denote the day on which the stamp is impressed; these stamps are the only lawful stamps for receipts, and they can be used with any effect for receipts only. It may here be noticed that the date to be found on any such stamp, or on any bill of exchange or promissory note stamp (bills, notes, and receipts being the only instruments for which the Commissioners have provided exclusive dies under the said Act) is the true date of the impression, which the proper officers are enabled to prove whenever occasion for such evidence arises.

Any form of words signifying that money has been received is a receipt.

No particular form of words is essential to constitute a receipt liable to stamp duty; any writing signifying the payment of money, and that would, if stamped, operate as a discharge, is to be considered subject to the duty, as observed by Lord *Kenyon*, in a *qui tam* action for a penalty for writing a receipt on unstamped paper, in which the word "settled," written on a bill of parcels by the defendant, was held to be a receipt within the meaning of the 35 Geo. III. c. 55 (*b*).

'Settled."

'Paid."

On an indictment for forging a receipt for money, it appeared that the prosecutor gave money to the prisoner to pay bills; the prisoner wrote on *Sadler* the cheesemonger's bill, "Paid *Sadler*," which the prosecutor believed to be a receipt, and filed accordingly. Lord *Denman* expressed his opinion that it admitted of no doubt

(*a*) And except, also, under the general provision contained in the 43 Geo. III. c. 127, s. 5, in cases where they are already impressed with stamps of sufficient amount, but of improper denomination, see p. 271, *ante*.

(*b*) *Spawforth* v. *Alexander*, 2 Esp. 621.

that it was a receipt for money; and the prisoner was found guilty (*c*).

A memorandum of this kind, therefore, if made by the person to whom the money was paid, would be a receipt liable to stamp duty, even in the absence of the special provisions in the Stamp Act.

Indorsement by bailiff on a sheriff's warrant stating the receipt of the money.

An indorsement by a bailiff on a warrant under a *ca. sa.* to the following effect: "Discharge the defendant, I have received the within levy money," Lord *Kenyon* admitted as evidence, without a stamp, to charge the bailiff with the money, but reserved the point. The receipt of the money was proved by other means, and the point no further discussed (*d*).

It would seem impossible to contend that such a memorandum was a receipt liable to stamp duty; it was not, in any sense, a discharge; it was, merely, an intimation, from a deputy to his principal, that he had received the money which he had been directed to levy against a third person, and was absolutely necessary to be made, in some shape or other, to entitle the party to be discharged from custody; it might be classed with a sheriff's return to a writ of execution; it was, in fact, the officer's return to the sheriff, as that of the latter would be to the Court.

Receipt for money to be applied to purchase an annuity.

In *Catt* v. *Howard* (*e*) a receipt written by the defendant's agent for money given to him by the plaintiff to purchase an annuity was rejected, in an action for the money, for want of a stamp, *Abbott*, C. J., being of opinion that it could not be received.

Receipt for a deposit.

This last mentioned case may be said to be overruled by that of *Tomkins* v. *Ashby* (*f*), in which an unstamped memorandum as follows, *viz.*: "September 25, 1824—Mr. *Tomkins* has left in my hands 200*l.*" was admitted to prove a deposit. On a rule for entering a nonsuit, in arguing against the propriety of such admission, the exemption in favour of deposits with bankers was referred to; but the Court held that this was not a "receipt or discharge given for or upon the payment of money;" that these words, and the notes in the schedule to the 55 Geo. III. c. 184 imported that something formerly due had been discharged. As to the exemption in favour of bankers, the Court observed, that it was not surprising that the Bank of England, and bankers in general, in order to remove all doubt, should be anxious to procure the insertion of an exemption.

(*c*) *Reg.* v. *Houseman*, 8 C. & P. 180.

(*d*) *Perchard and another* (*Sheriffs of London*) v. *Tindall*, 1 Esp. 394.

(*e*) 3 Stark. 3.

(*f*) 6 B. & C. 541.

Acknowledgment of a loan.

Somewhat analogous to the last case is that of an acknowledgment of a loan. In *Huxley* v. *O'Connor* (*g*), a memorandum, "May 6, 1836, Mr. *H.* has advanced me 12*l.* on furniture delivered to him at Stratford," was admitted by Lord *Abinger* without a stamp, as being merely an acknowledgment that money had been advanced on a pledge of furniture.

So, in the Court of Exchequer in Ireland, a writing as follows: "Received from —— 35*l.* for which I will account on demand," was held not to be liable to stamp duty, as a receipt, not being founded on any antecedent debt (*h*).

In *Taylor* v. *Steele* (*i*), the following was held not to require a receipt stamp, *viz.*: "Received from Mrs. *B. T.* the sum of 170*l.*, for which I promise to pay her at the rate of 5*l. per cent.*"

Accountable receipt.

The following document, given by a banker to the allottee of shares in a joint-stock company, was held to be an accountable receipt within the exemption in the schedule to the 55 Geo. III. c. 184, *viz.*:

"The London and Westminster Water Company.
London, Feb. 8th, 1841.

"Received 100*l.* to be placed to the account of *W. C.*, *T. B.*, &c.
For *Jones Loyd & Co.* *A. P.*

"This receipt is not transferrable. The party to whom these shares are allotted is requested to attend, immediately, at the Offices of the Company with this receipt, and sign the parliamentary contract, where the receipt will be exchanged for the shares," &c. (*k*).

Memorandum discharging a claim is a receipt, although no money pass.

But it is not necessary that money should pass between the parties, to render a receipt, given in discharge of an account, liable to the duty. In *Lucas* v. *Jones* (*l*), which was an action by a mortgagee of premises against the lessee of a mortgagor, for five quarters' rent; the defendant pleaded payment to his lessor before notice of the transfer of the reversion. The defendant was, himself, a mortgagee of other premises of the lessor, and the defence was, that he had applied the rent sued for to the payment of a portion of the money due on his mortgage; and the following documents were offered in evidence, *viz.*: "Mr. *T. W. Marriott* [the lessor] having

(*g*) 8 C. & P. 204.
(*h*) *Carey* v. *Eccleston*, 1 C. & D. 6.
(*i*) *Ante*, page 41.
(*k*) *Clarke* v. *Chaplin*, 16 L. J. R. (N. S.) Exch. 246; 1 W. H. & G. 26.
(*l*) 13 L. J. Rep. (N. S.) Q. B. 208; 5 A. & E. (N. S.) 949.

discharged the five quarters' rent of my house, amounting to 72*l.* 3*s.* 9*d.*, I have written off the said sum from his mortgage deed, and will write a receipt on his mortgage deed.

"*R. S. Jones*," [the defendant]."

"June 24, 1841. Mr. *Jones* having written off the sum of 72*l.* 3*s.* 9*d.* from his mortgage debt, being five quarters' rent of his house, I hereby discharge this same rent to the 24th day of June, 1841. *T. W. Marriott.*"

The latter was stamped with 20*s.*, as an agreement, long after it was written. It was insisted that it was a receipt, and not an agreement, and that under the 35 Geo. III. c. 55, a receipt can only be stamped within a month, and on payment of a penalty. On the part of the plaintiff, it was contended, that it was not a receipt upon the payment of money. The Court held that it was a receipt within the Stamp Act. *Patteson*, J., observed that if the 10th sect. of the 55 Geo. III. c. 184, availed in such a case, all receipts written on unstamped paper might be made valid at any time. His Lordship, on referring to the description of a receipt in the 35 Geo. III. c. 55, said, that the words were too strong to be got over.

The notes in the schedule to the 55 Geo. III. c. 184, to the same effect should, rather, have been referred to.

Receipt for acceptances.

In *Scholey* v. *Walsby* (*m*), an acknowledgment of having received acceptances, was deemed to be a receipt for money, within the meaning of the Act imposing a duty on receipts, *viz.*: "Received of *W.* his acceptances for 200*l.* due Feb. 20th and 25th, out of which *W.* has my acceptance for 60*l.*; the difference I am to make up by the said time of payment."

The 55 Geo. III. c. 184, declares that receipts for, or upon payments made by or with bills, notes, or other securities, shall be deemed to be receipts, given upon the payment of money, within the meaning of the Act. See TABLE.

Difference between receipts and a statement of account.

Memorandums in an account, signifying the payment of money at different times, in the handwriting of the party receiving the money, were held, in *Wright* v. *Shawcross* (*n*), to be receipts. The defendant offered in evidence the following unstamped paper, written by the plaintiff, *viz.*:—

(*m*) Peake, 24. (*n*) 2 B. & Ald. 501.

Mr. *Shawcross* Dr. to *James Wright*.

	£
To different items amounting in the whole to	66
By cash towards the above . . .	19
	47
Sept. 6, by cash towards	10
	37
Cash and bills 4*l.* and 20 sacks at 1*s.* each	5
	32

For the defendant it was contended that this was an account, and that the entries were not receipts liable to stamp duty, but the paper was rejected; and on a motion to set aside the verdict the Court held that it was properly so. It appeared, from the paper, that the acknowledgments were made at successive times, upon the payment of the money, and, therefore, required to be stamped. The case of an account was different; there the sums stated to be received are not written on the receipt of the money, but long after.

Certain memorandums of payment of money admitted without stamps as evidence of charges made on the party.

But in an action by a tenant against his landlord for overpayments made during a series of years, accounts, containing the sums in question, delivered to the tenant, upon each of which the word "paid" was written, either by the defendant or his steward, the Lord Chief Baron was of opinion that the accounts delivered (which had no receipt stamps, and were objected to on that account), coupled with the entries of the same sums in the steward's books, as paid, were admissible to show that the plaintiff had been overcharged (*o*).

It would seem that the accounts were admitted rather as evidence of the amounts charged, than as actual payments; still, it is not very clear upon what ground they were received, showing, as they must have done, the actual payments.

Acknowledgment of the correctness of an account not a receipt.

An acknowledgment, at the foot of an account of receipts and payments, of the correctness of such account, is not a receipt. In *Wellard* v. *Moss* (*p*), the defendant produced an account of sums advanced to the plaintiff, and of disbursements made for him, at the foot of which was the following memorandum, signed by the

(*o*) *Clarke* v. *Hougham*, 3 D. & R 323.
(*p*) 7 Moore, 503.

plaintiff: "I acknowledge the above account being correct, and am fully satisfied therewith." The Court, in reference to *Jacob* v. *Lindsay* (*q*), held that this might be given in evidence without a stamp. The counsel for the plaintiff drew the distinction between the two cases. In *Jacob* v. *Lindsay* the writings referred to were not admitted in evidence, and it was because they could not be so admitted that other evidence was given; how, therefore, that case could be an authority for the present is not very readily perceived. No authority, however, was wanted; the decision, upon principle, was, undoubtedly, proper; there can be no pretence for saying, that a *bonâ fide* admission, in writing, that the statement of an account current is correct, is a receipt within the meaning of the Stamp Act.

Receipt and other matter.

As to receipts containing other matters besides acknowledgments of the payment of money.

Receipt and agreement stamped as the former only; read.

In *Grey* v. *Smith and another* (*r*), a receipt for a sum of money as the price of certain goods, and which, also, contained an undertaking by the purchaser to allow the goods to remain on the premises, was admitted as a receipt, being stamped as such, without an agreement stamp. The other matter, in this case, may be said to have related to the sale of goods, the suffering of them to remain upon the premises being one of the terms of the contract, and the memorandum evidence of the sale, although they still remained in the custody of the seller; this, however, does not appear to have been made a point in the case. See page 341, *ante*.

An unstamped receipt, containing terms of contract, rejected for want of an agreement stamp.

A memorandum at the bottom of a bill of parcels of goods sold, in these words, "Settled by two bills, one at three months, and another at nine months," was held to be evidence of an agreement as to the mode of payment, and to require an agreement stamp (*s*). In this case the defence was that the action for the goods was commenced before the term of credit had expired, and this memorandum was put in, as evidence. No allusion seems to have been made to the circumstance of its relating to the sale of goods, and being, therefore, exempt from the agreement duty. The propriety of the decision may, perhaps, be, altogether, questioned; the writing seems as much a receipt as that in *Scholey* v. *Walsby*.

Bill of parcels and receipt thereon.

A somewhat similar memorandum, but assumed to be a receipt liable to stamp duty, and written at the same time as the bill of

(*q*) Page 563, *post*. (*r*) 1 Camp. 387.
(*s*) *Smith* v. *Kelby*, 4 Esp. 294.

parcels, was, in *Millen* v. *Dent* (*t*), held not to preclude the reading of the latter. They were treated as, essentially, distinct.

Receipt and warranty of a horse.

A stamped receipt for the price of a horse, with the words, "warranted sound," subjoined, was received, in *Skrine* v. *Elmore* (*u*), as evidence of the warranty, without an agreement stamp; the warranty relating to the sale of goods, wares, and merchandise, and, therefore, exempt.

Receipt with a memorandum of exoneration of a particular charge.

In an action for recovering back money paid to an overseer, for expences relating to an illegitimate child, no part of the money having been applied, the following, stamped only as a receipt, was admitted in evidence: "Received 1st July, 1818, of Mr. *W.* the sum of 35*l.* by bill of exchange, payable at two months after date, which, when paid, will exonerate him from the expences attending the birth of an illegitimate child to which he is now chargeable." This, certainly, merely amounted to a receipt for the money due on a particular account, and contained no matter of contract, and, so, the Court considered (*x*).

Indorsement of a receipt on a mortgage with an agreement to assign.

An indorsement on a mortgage, by the mortgagee, acknowledging the payment of the money, and containing, also, an agreement to assign the property, was allowed by Lord *Abinger* to be read, so far as it related to the receipt, although the other part required an agreement stamp, which was not impressed thereon. In this case, the receipt was within the exemption specified in the Act (*y*). See Lord *Campbell's* remarks in *Matheson* v. *Ross*, *ante*, page 305.

Memorandum of payment importing no acknowledgment.

A memorandum importing that *A. B.* had paid a sum of money to *C. D.*, but not importing any acknowledgment from *C. D.* of his having received it, was held not to be a receipt within the statute relating to the forging of receipts (*z*).

Unstamped receipts admitted for collateral purposes.

The general question is elsewhere considered how far an instrument liable to stamp duty may be admitted for a collateral purpose without a stamp. See "INSTRUMENTS;" and, particularly, see the said case of *Matheson* v. *Ross*.

Indictment for embezzlement.

In *The King* v. *Hall* (*a*), which was an indictment for embezzlement, a receipt given by the prisoner for the money was offered in evidence, but rejected for want of a stamp. Several cases were cited to show that it might be received, but, in those cases, the in-

(*t*) 11 Jur. 818; 16 L. J. R. (N. S.) Q. B. 375; 10 A. & E. (N. S.) 846.

(*u*) 2 Camp. 407.

(*x*) *Watkins* v. *Hewlett*, 1 B. & B. 1; 3 Moore, 211.

(*y*) *Odye* v. *Cookney*, 1 Moo. & R. 517. See page 341, *ante*.

(*z*) *Rex* v. *Harvey*, Russ. & Ry. 227.

(*a*) 3 Stark 67.

strument was not offered to give effect to it, whereas, in the present instance, the object was to prove the actual receipt of the money.

Set-off.

In an action, on a bill of exchange, a witness, for the defendant, proved that, after the bill was due, he took to the plaintiff's house a certain quantity of cloth, with a paper to the following purport:—

"Mr. *Brooks* to *J. Davis*

	£	s.	d.
20 yards cloth	14	0	0
Over due bill	13	0	0
	£1	0	0

"Received *J. Davis*."

The paper was objected to for want of a stamp, but admitted, L. C. J. *Best* observing, that he once held upon the Oxford Circuit, and believed his opinion was never questioned, that a paper not put in, as a receipt, did not require a stamp (*b*). If the above was a receipt, it could only be for the balance of 1*l.*, for which amount no stamp was necessary. The ground of the objection is not, at all, intelligible.

In replevin, unstamped receipts to prove amount of rent acquiesced in, rejected.

In *Hawkins* v. *Warre* (*c*), a replevin case, certain unstamped receipts for rent were offered by the defendant, for, as it was contended, a collateral purpose, *viz.*, to prove, not the receipt by herself of the moneys specified in them, but that the plaintiff had, by paying those particular amounts, acquiesced in certain terms, and that, therefore, the defendant's distress for the rent, as stated in the avowries, was lawful; but they were rejected, and, as afterwards held by the Court, properly so, the direct object of producing them being to prove the payment of the rent.

Unstamped receipts may be referred to by witness.

Although receipts cannot be given in evidence for want of stamps, a witness may refer to them for the purpose of refreshing his memory, and otherwise.

In an action for goods sold and money lent, a book, belonging to the plaintiff, containing entries of the goods and cash, each page of which the defendant had signed, acknowledging the contents, was produced, but was not allowed to be read for want of receipt stamps; a witness, in whose hands it was placed, was, nevertheless, allowed to prove that the defendant admitted to him the receipt of each article, on his reading it over to him (*d*).

(*b*) *Brooks* v. *Davis*, 2 C. & P. 186. (*c*) 3 B. & C. 690.
(*d*) *Jacob* v. *Lindsay*, 1 East, 460.

And so, a witness, who saw an unstamped receipt given, was allowed to refer to it, to assist his memory as to the payment of the money (*e*).

And in *Catt* v. *Howard* an unstamped receipt, given by the witness, (who was blind,) as the agent of the defendant, was read over to him to refresh his memory.

Bankrupt's book, containing an account of money received by him, shown to him in action against his assignees.

In an action against the assignees of a bankrupt, for money paid to him before his bankruptcy, it was held, that an entry in a rough cash book kept by the bankrupt, who was examined as a witness, of the receipt of the money, might be shown to him, to refresh his memory as to the payment, although not stamped as a receipt, the Court holding, that it could not, itself, be given in evidence, to prove the payment of the money, without being stamped (*f*). Assuming this opinion of the Court to be correct, the case ranges properly with the preceding ones, and it was not material to consider the question suggested by the opinion; but, with deference to the judgment of the Court, it is, humbly, submitted that if the books were evidence at all, they were equally so whether stamped or not; the entries in such cases cannot possibly be "receipts or discharges *given* for or upon the payment of money," charged with stamp duty; they are not *given* at all; they are, certainly, memorandums or acknowledgments of the payment, but they are retained by the party making them, and are not given to the person paying the money; if they were to be held to be discharges, within the Stamp Act, no account could be taken in the Master's office in the Court of Chancery where the party's books are the evidence; a common case in practice. Such memorandums are, in fact, less receipts than the entries in an account delivered.

Receipts in full.

As to receipts in full of all or certain demands.

Any receipt, note, &c., whatever, signifying any general acknowledgment of any debt, account, claim or demand, debts, accounts, claims or demands *whereof the amount is not specified*, having been paid, settled, balanced or otherwise discharged or satisfied; or whereby any sum specified is acknowledged to be received *in full*, or in discharge or satisfaction of any such debt, &c., is to be deemed to be a receipt for 1000*l.* or upwards, and chargeable with the duty of 10*s.* See the TABLE.

In *Dibdin* v. *Morris* (*g*) a receipt, on a stamp of 1*s.* 6*d.*, given by the plaintiff, who had written a piece for a theatre, and was also

(*e*) *Rambert* v. *Cohen*, 4 Esp. 213.
(*f*) *Maugham* v. *Hubbard*, 8 B. & C. 14; 2 Man. & R. 5.
(*g*) 2 C. & P. 44.

the stage manager, for 52*l.* 10*s.*, "being the amount of a benefit at the Haymarket Theatre, which sum, together with 100*l.* already received, is in satisfaction of all my claims for the last season," was held by *Abbott*, L. C. J., to be a receipt for 52*l.* 10*s.* only, and not in full of all demands; though it mentioned the previous receipt of the other sum it was not, at all, given as a receipt for that sum. This opinion would seem to have been given as if the question, properly, was, whether the receipt was, in a general sense, in full of all demands. The receipt, certainly, was not in full of all demands; but if the words, "in satisfaction of all my claims for the last season," do not, in terms, signify a general acknowledgment of certain claims, whereof the amount is not specified, having been satisfied, it would be difficult to frame a receipt that would do so. Moreover, the distinction is somewhat refined between mentioning the payment of money, and giving a receipt for it; in either case, it is a discharge.

The writer's view is sustained by the subsequent case of *Birt* v. *Leigh*, in which the following writing was produced, *viz.*: "Received of Mr. *G. L.* the sum of 2*l.* 2*s.*, being the balance of account up to this day for houses in Wellington Road.—*W. B.*" It was held to require a 10*s.* stamp, as an acknowledgment of a sum, therein mentioned, being received in satisfaction of a debt, whereof the amount was not specified, within the words of the statute. It was considered that *Dibdin* v. *Morris* was decided by the Lord Chief Justice without a reference to the special clauses in the Act; and on the ground that the receipt, there, was not "in full of all demands" (*h*).

Law v. *Gunley* (*i*) was a different case; the receipt was as follows, *viz.*: "Received of *C.* the sum of 9*l.* in full for what I have done for him." Here the sum specified was, evidently, the full extent of the demand. *Tindal*, C. J., said, "I take it that the object of the legislature in requiring that the larger stamp of 10*s.* should be put upon a receipt in full of all demands was, to prevent the necessity, where such receipt was given, of being prepared with other evidence; but, looking at the words of this receipt, it appears to me, that it would not have the effect of preventing the party from coming prepared with other evidence to meet any claim upon him; I am, therefore, of opinion that it does not require a 10*s.* stamp."

(*h*) 14 M. & W. 177. (*i*) 4 C. & P. 149.

In *Tebbut* v. *Ambler* (*k*), the following paper, stamped as an agreement, was admitted by Lord *Denman*, *viz.*: "Mem. 30th April, 1836, settled all accounts of law business up to this day and will give a receipt in full of all demands when called for."

Memorandum of accounts balanced.

In an action by a master against his servant for money received, as such servant, the defendant contended that he had fully accounted, and, in proof, tendered a receipt for 18*l.*, which, being objected to, for want of a stamp, was withdrawn and the following memorandum, indorsed on the receipt, offered, *viz.*: "Balanced up to this day, as per cash book, 19th Nov., 1845.—*S. F.*" This was objected to as requiring a receipt stamp; but it was admitted, and held, on motion, properly so, there being nothing on the face of it to show that it was given for or upon the payment of money, nor any evidence to that effect (*l*).

Receipt of money for favours and services.

On a plea of accord and satisfaction in an action for seduction, the following receipt was received in evidence: "Received of *A. B.*, the sum of 10*l.* in addition to the various amounts received of him at different times, in consideration of any favours conferred, or services rendered to him by either of us, at any time during our acquaintance, and which sum we hereby acknowledge to be ample remuneration, and we beg to return him our best thanks for the same." On motion, the Court of Exchequer said that the document had nothing to do with any debt, claim, or demand, within the meaning of the 55 Geo. III. c. 184, and that a stamp for the 10*l.* was sufficient (*m*).

Averments in indictment for forging a receipt.

In an indictment for forging a receipt the necessary and proper averments that the document in question is a receipt for money must be made, the special provisions as to what shall be deemed a receipt within the Stamp Acts not dispensing with them (*n*).

Exemptions.

EXEMPTIONS. Amongst other exemptions from the duties on receipts are, "receipts indorsed or otherwise written upon, or contained in any bond, mortgage, &c., of any principal money, interest or annuity thereby secured." A bond for 11,000*l.* was given, payable by instalments, and being covered with indorsements of receipts, an unstamped paper was annexed, upon which were written further payments of instalments, and it was allowed to be read, as within the exemption (*o*).

Receipts for instalments annexed, there being no room left on the bond.

(*k*) 9 C. & P. 60.

(*l*) *Finney* v. *Tootel*, 12 Jur. 291; 17 L. J. R. (N. S.) C. P. 158; 5 M. G. & S. 504.

(*m*) *Boyle* v. *Brandon*, 13 M. & W. 738; 14 L. J. R. (N. S.) Exch. 344.

(*n*) *Thompson's case*, 2 Leach, 910.

(*o*) *Orme* v. *Young*, 4 Camp. 336.

Receipt by clerk of Deputy Receiver General of Taxes.

The 48 Geo. III. c. 141, s. 1, (relating to Taxes) requires receipts to be given by the Receiver General or his deputy for sums of money paid to him for taxes, for which no stamp duty is to be chargeable. A receipt signed by a clerk of the deputy, in the name of the deputy, was held to be within the exemption (*p*)

Receipts given abroad.

Receipts for money, given in France, were held in *James* v. *Catherwood* (*q*) to be receivable in evidence, here, without being stamped according to the laws of that country, it being held, that a British Court cannot take notice of the revenue laws of a foreign state. Upon this subject see *ante*, page 282.

It is not to be supposed, from this case, that a receipt written abroad, intended as a discharge for money to be paid in this country, is exempt from British stamp duty. Such a writing is liable.

(*p*) *Edden* v. *Read*, 3 Camp 338. (*q*) 3 D & R. 190.

Schedule.

THE word "Schedule" is used on different occasions in that part of the Stamp Act which bears the same name. It will be found in all cases where progressive duties are imposed; and it will also be found as a document charged with a substantive, specific duty. In every instance the thing designated is, no doubt, in character the same; but under the head of progressive duty, it is alluded to as written upon, or annexed to the instrument charged with the duty; whereas, under the title "Schedule," it is spoken of as referred to in the principal instrument as separate and distinct therefrom, and not indorsed upon or annexed to it, and is, therefore, itself, specifically charged with a separate stamp duty of 25*s.*, and progressive duties thereon. So that, in one case, stamp duty is charged in respect of the quantity of words contained in the schedule, as a portion of an instrument upon which it is written, or to which it is annexed, and is not, itself, necessarily, impressed with any stamp; whilst in the other, the duty being imposed as upon a distinct instrument, such duty must be denoted by a stamp thereon. The two cases are frequently confounded. See further as to what is not a schedule, and as to the distinction between the two duties; and, also, as to the admission of the principal instrument in evidence, where the schedule, to which it refers, is not stamped, page 545, *ante*.

See, also, *Briggs* v. *Peel* (*a*) as to several contracts referring to one specification, with a provision in the latter applicable to all the contracts.

(*r*) *Ante*, page 326.

Spoiled Stamps.

5 Geo. III. c. 46.

Allowance of stamps inadvertently spoiled, where the instrument is not executed.

Sect. 39.—Persons who have at any time in their possession any stamped vellum, parchment, or paper, written upon, which has been *inadvertently* and *undesignedly* spoiled, obliterated, or by any other means rendered unfit for the purpose intended, before the same is executed by any party or parties, and which, in either case, has not been used for any other purpose, or in any other manner whatsoever, nor any money or other consideration paid or given to the attorney, solicitor, or other person employed to transact the business intended to have been carried into execution by such writing or ingrossment, or to the writer thereof, for the duties thereon, may bring or send the same to the Commissioners of Stamps at their Head Office, and upon oath made, to the satisfaction of the Commissioners, (which oath they may administer,) that such stamped vellum, parchment, or paper, has not been executed by any party or parties, or used for any other purpose, or in any other manner whatsoever, and that no money or other consideration has been paid or given for the duties marked thereon, (except the money first paid to the Commissioners, the Receiver General, or other officer appointed to collect and receive the same,) the said Commissioners are required to stamp and mark for the persons who so bring and deliver any quantity of such stamped vellum, &c., the like quantity of vellum, &c., with the duties stamped on that which is so spoiled, without taking any money or other consideration whatsoever. See limitation as to time in 53 Geo. III. c. 108, s. 16.

39 & 40 Geo. III. c. 72.

Sect. 16.—For the allowance of stamp duty on useless probates or administrations where a will has been proved, or administration taken out twice; and on sea policies. See "Probate," "Insurance."

41 Geo. III. c. 86.

As to stamping second and other probates and administrations with denoting stamps. See "Probate," &c.

44 Geo. III. c. 98.

Allowance of stamps inadvertently spoiled, where the instrument is executed.

Sect. 17.—The Commissioners may exchange, in the manner, and under the special circumstances mentioned in the 5 Geo. III. c. 46, any stamps which shall have been spoiled, whether the instrument shall have been executed or not, upon such proof, on oath or affirmation, to their satisfaction, as they shall require. And to prevent fraudulent claims they may make such rules and orders for regulating the methods, and limiting the times for cancelling or allowing other stamps in lieu of such as have been by any means spoiled, damaged, or rendered unfit for use, and which have not been actually made use of for the purposes intended, as they shall find necessary and convenient for effectually securing the duties, and doing justice to the parties claiming the benefit of such indulgence.

50 Geo. III. c. 35.

Sect. 8.—As to the allowance of sea policy stamps in certain cases. See "INSURANCE."

Improper stamps on executed instruments may be cancelled, and others impressed in certain cases.

[Transfer of stamps.]

Sect. 13.—Reciting that mistakes have been frequently made in the use of stamps for denoting *ad valorem* duties granted by the 48 Geo. III. c. 149, and that some persons have used stamps of much greater value than were necessary, and others have used stamps for instruments not liable to duty, and others, without intention of fraud, have used stamps of less value than were necessary, but still of considerable value, whereby many persons have sustained a considerable loss, as the Commissioners are not authorized to give relief in such and the like cases, but which it is expedient that they should be enabled to do under certain restrictions. It is enacted that where any person shall have inadvertently used for or upon any instrument liable to a stamp duty under the said Act, any stamp or stamps of greater value than the instrument required by the sum of fifty shillings or upwards; and also where any person shall have inadvertently used any stamp or stamps of the value of fifty shillings or upwards, for or upon any instrument not liable to any stamp duty; and also where any person shall have inadvertently used for or upon any instrument liable to a stamp duty under the said Act, any stamp or stamps of the value of fifty shillings or upwards (exclusive of any progressive duty), but which shall be of less value than the instrument required; the Commissioners of Stamps may allow, as spoiled, and cancel the stamp or stamps misused in the several cases aforesaid, and give another stamp or stamps of the same description and value, or otherwise, at their discretion, stamps of any other description and of equal value in lieu, and cause the instrument bearing the stamp or stamps misused, if liable to any duty, to be stamped with the proper stamp or stamps upon payment of such duty, without demanding any penalty; or if another instrument of the same tenor and effect be produced duly stamped and duly executed, and the instrument bearing the stamp or stamps misused be delivered up to be cancelled, the Commissioners may allow, as spoiled, and cancel the stamp or stamps thereon, and give another stamp or stamps of the same description and value, or otherwise, at their discretion, stamps of any other description and of equal value in lieu thereof: Provided always, that the application for such relief be made within two calendar months after the date of the instrument and provided it be made appear to the satisfaction of the said Commissioners, in cases where the stamp or stamps misused be of less value than the instrument required, that the same were so used by mistake or under a misapprehension of the law, and without any intention to avoid or delay the payment of the full duty.

Conditions.

NOTE.—The period extended to six months by 53 Geo. III. c. 108, s. 13.

Sect. 14.—This clause authorizes the allowance of stamps on executed instruments in certain cases, but the provision is altogether superseded by the 53 Geo. III. c. 108, s. 11.

On allowance, stamps may be given of other descriptions.

Sect. 15.—Where the Commissioners have the power of allowing and cancelling spoiled stamps, and of giving others of the same description and value in lieu thereof, they may at their discretion give stamps of any other description and of equal value in lieu.

53 Geo. III. c. 108.

Powers of the Commissioners to allow spoiled stamps extended.

Sect. 11.—Reciting that the powers vested in the Commissioners for the allowance of spoiled stamps are not sufficiently extensive. It is enacted that they may allow, as spoiled, and cancel and give other stamps in lieu of all such stamps as shall have been used for or upon any presentations to ecclesiastical benefices, not followed by institution: or for or upon any instruments signed by any party but afterwards found to be absolutely void in law from

the beginning; or which, by reason of any error or mistake therein shall be afterwards found unfit for the purpose originally intended; or which, by reason of the death of any person, whose signature shall be necessary thereto, without having signed the same, or by reason of the refusal of any such person to sign the same, cannot be completed, so as to effect the transaction in the form proposed; or which, for want of the signature of some material and necessary party, shall, in fact, be incomplete and insufficient for the purpose intended; or which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted shall fail of their intended purpose; or which, for want of enrolment or registration within the time required by law shall become null and void; or which shall become useless in consequence of the transaction therein mentioned being effected by some other instrument or instruments duly stamped; so that the instruments for which an allowance of stamps shall be claimed in the cases aforesaid shall be delivered up to be cancelled; and provided the application for the relief be made within six calendar months after the date of the instrument in question, except where the same shall become void for want of enrolment within six calendar months from the date, and in those cases, within six calendar months next after the same shall so become void; and except where the same shall have been sent abroad, and in those cases within six calendar months after the same shall be received back; and provided no action shall have been brought or suit commenced in which such instrument could or would have been given or offered in evidence; and provided all the facts shall be fully proved, by oath, or solemn affirmation in the case of quakers, to the satisfaction of the Commissioners.

Not to extend to policies.

Sect. 12.—Nothing hereinbefore contained, respecting the allowance of spoiled stamps, shall extend to policies of insurance, for which special provision is already made by the Acts relating thereto. See "INSURANCE," page 398, *ante*.

Time extended for relief under 50 Geo. III. c. 35.

Sect. 13.—The time for giving relief, in the cases provided for by the 50 Geo. III. c. 35, where stamps shall have been used of greater or less value than the instruments required, and where stamps shall have been used for instruments not liable to any stamp duty, shall be extended to six calendar months after the date of the instruments bearing the stamps misused.

Allowance of spoiled stamps on bills and notes.

Sect. 14.—The Commissioners may allow as spoiled, and cancel and give other stamps in lieu of all such stamps as shall have been used for any bills of exchange or promissory notes which shall have been signed by or on the behalf of the drawers thereof, but which shall not have been delivered out of their hands to the payees therein named, or any person on their behalf, or have been deposited with any person as a security for the payment of money, or have been any way negotiated, issued, or put in circulation, or have been made use of in any other manner whatsoever, and which bills shall not have been accepted by the drawees or tendered for such acceptance; provided that such bills and notes be brought for allowance, and be delivered up to be cancelled within six calendar months after the date, or after the signing of the same if they shall not bear any date; and provided all the facts, upon which the Commissioners are authorized to give relief, be fully proved by oath or affirmation to their satisfaction.

Sect. 15.—As to the allowance of the duty on articles of clerkship, where new articles are entered into for a new term. See the present provision in lieu in 55 Geo. III. c. 184, (Schedule,) and in the TABLE.

Time for allowance where instruments not executed.

Sect. 16.—Where the Commissioners are already authorized to allow as spoiled any stamps used for instruments not fully written, or not signed by any party, they shall not make the allowance, unless the stamps be brought for that purpose to them at their Head Office, or to their officers at Edinburgh in case of stamps spoiled in Scotland, within six calendar months after the same shall have been spoiled, if the same shall belong to persons resident in London

or Westminster, or in Edinburgh, or within ten miles thereof respectively, or within twelve calendar months after the same shall have been spoiled if belonging to persons resident elsewhere.

Commissioners may make regulations and require affidavits.

Sect. 17.—The Commissioners may make such rules and regulations, and require affidavits, or solemn affirmations in the case of quakers, of all such facts and circumstances, in regard to the allowance of spoiled or useless stamps, in all or any of the cases provided for by this or any former Act, as they shall in their discretion judge necessary or expedient, for the purpose of preventing frauds and evasions; such affidavits or affirmations to be made before the said Commissioners, or any one or more of them, or before a Master in Chancery, ordinary or extraordinary, in England, or before any person duly commissioned to take affidavits by the Court of Session or the Court of Exchequer in Scotland; who are hereby respectively authorized to take the same, and administer the proper oath or affirmation.

Perjury.

Sect. 18.—If any person making any such affidavit or affirmation knowingly and wilfully make a false oath or affirmation, and be thereof lawfully convicted, he shall be subject and liable to such pains and penalties as persons convicted of wilful and corrupt perjury.

3 & 4 Will. IV. c. 97.

New dies may be provided.

Sect. 16.—By this clause the Commissioners are authorized to discontinue the use of any dies, and cause new dies, with such altered devices thereon as they shall think fit, to be provided and used in lieu.

To be the only true and lawful dies.

Sect. 17.—And whenever they shall so discontinue any die, and shall provide any new die in lieu, and shall give public notice thereof in the London and Edinburgh Gazettes, then from and after such day as shall be fixed the new die shall be the only true and lawful die for denoting the duty; and all instruments for the stamping of which any such new die shall have been provided written upon vellum, &c., stamped with any other die, and also such instruments which having been written upon vellum, &c., stamped as last aforesaid, shall not have been executed by any party before or upon the said day so fixed, shall be deemed to be written on vellum, &c., not duly stamped: Provided always, that in the case of any instrument required to be stamped with such new die which shall be written upon vellum, parchment, or paper stamped otherwise than with such new die, and which after the said day or time so fixed and appointed shall be first executed or signed by any party thereto at any place out of the United Kingdom, the Commissioners are required, upon proof of the facts to their satisfaction, to cancel and allow the stamp or stamps impressed on such instrument, and to cause the same instrument to be stamped with the new die to the same amount of duty, without payment of any penalty, provided such instrument be produced for the purpose within one calendar month after the same shall arrive in this kingdom.

Allowance of the old stamp when deed executed out of the kingdom.

Allowance of stamps rendered useless by new dies.

Sect. 18.—All persons having in their possession any vellum, parchment, or paper stamped with any die in lieu of which any such new die shall have been provided, and which vellum, parchment, or paper shall, by reason of the providing of such new die, be rendered useless or inapplicable for the purposes designed, may send the same to the Head Office within three calendar months next after the day so fixed by such advertisement as aforesaid; and the Commissioners, or their officer, may cause the stamp or stamps thereon to be cancelled, and such vellum, parchment, or paper, or (if the Commissioners or officer shall think fit) any other vellum, parchment, or paper, to be stamped with such new die in lieu.

Money may be returned for spoiled stamps.

Sect. 19.—In any case in which the Commissioners are or shall be authorized to cancel stamps spoiled or rendered useless or unfit, and to make allowance for the same by giving other stamps in lieu thereof, they may, if they in their discretion shall think fit, instead of giving stamps, repay to the party the

amount thereof in money, deducting per-centage as allowed on the purchase of stamps of the same description, and also, if they in their discretion shall think fit, refund and repay to any person possessed of any stamps not spoiled or rendered useless or unfit for the purpose intended but for which he shall have no immediate use or occasion, the amount or value of such stamps in money, deducting such per-centage, upon his delivering up such stamps to be cancelled, and proving, to the satisfaction of the Commissioners, that the same were purchased by him with a *bonâ fide* intent to use the same, and that he has paid the full amount or value denoted by such stamps, without any deduction, save and except only such per centage as aforesaid, and further, that such stamps were so purchased, within three calendar months next preceding, at the Head Office in Westminster or Edinburgh, or from some distributor or sub-distributor duly appointed, or some person licensed under this Act to deal in stamps

5 & 6 Vict c 79.

Sect 22 —Where a person is admitted a member of any of the Inns of Court in England, and also a student of King's Inns in Dublin, and has paid the duties on both admissions, the Commissioners may repay the English duty, deducting the usual discount, if application be made within six calendar months after the last admission

Where persons are admitted to the Inns of Court in England and Ireland, the duty to be returned on the admission in England

For the allowance of spoiled medicine labels, see "MEDICINES," page 450

FOR the purpose of obtaining an allowance of a spoiled stamp, the person to whom the Commissioners are authorized to make the allowance, or his agent, must attend at the Head Office on some day appointed for business of this description (*a*), and produce the stamp, and make or deliver an affidavit in the form required by the Board, when, if the allowance be granted, a ticket is issued to the party entitling him to another stamp of the same value If the party himself attend, a form of affidavit is filled up by the proper officer, and he is sworn before a Commissioner, who sits apart from the Board for the purpose of attending to applications relating to spoiled stamps Where the party does not, himself, attend he must make the necessary affidavit (which in this case is chargeable with a stamp duty of 2*s* 6*d*) before a Master in Chancery, ordinary or extraordinary, in *England*, or a Commissioner of the Court of Session or Exchequer in *Scotland*

(*a*) Tuesdays, Thursdays, and Saturdays, (between the hours of 12 and 2,) are the days fixed for the attendance of parties to make affidavits, and obtain allowance thereon, the alternate days are those on which affidavits sent from the country, and the stamps to which they refer, are received for examination To persons bringing the latter are delivered tickets, to be exchanged on the Monday following for others authorizing the receipt of fresh stamps where the application is granted

In certain large towns, arrangements have been made for transacting this business before the distributor of stamps, who is authorized to administer the oath, and who will receive and transmit to the Head Office the spoiled stamp for allowance

The following is a form of the affidavit, applicable to every kind of stamp, which may be adapted to any particular case

A B of &c
maketh oath and saith, that the several stamps hereinafter specified and described, that is to say—

Number of Stamps	Value of each			Description of Instrument	Total Value		
	£	s	d		£	s	d

are the property of this deponent and were purchased by
or for use and that paid, or now stand indebted for,
and really and truly liable to pay the full amount or value thereof,

Instruments not written upon

And with regard to such of the skins, sheets, or pieces of parchment or paper on which the said stamps are impressed, as are not written upon, this deponent saith that the same have been inadvertently and undesignedly spoiled and rendered unfit for use,

Instruments executed

And with regard to bearing date the

and which appears to have been signed by
the duplicate [or instrument in lieu] of which is now produced and exhibited, this deponent saith that the same was spoiled in consequence of

and that since the same was so signed, no addition or other alteration whatever has been made therein, or thereto but that the same is now in the same state and condition as when the same was so signed, and that the same was *bonâ fide* prepared and signed for the purpose of carrying into effect the transaction appearing upon the face thereof, between the parties and upon the terms and conditions therein set forth,

53 Geo III c 108, s 11

and that the same was so signed within six calendar months preceding the date hereof

Instruments written but not signed

And with regard to such other of the skins, sheets or pieces of parchment or paper on which the said stamps are impressed as are written upon, this deponent saith, that the same have been inadvertently and undesignedly spoiled or are become useless, and that the writing on any of the said skins, sheets, or pieces of parchment or paper, hath not been signed by any party or otherwise completed as a legal instrument, and hath not had any operation or effect whatsoever —

Bills of exchange and

And with regard to the several bills of exchange and promissory notes written on the paper whereon the said stamps are impressed, the same have

been inadvertently obliterated or spoiled or are unfit for the purpose intended, by reason of a mistake therein, [or of their being written on wrong stamps, or are become useless through accidental and unforeseen circumstances,] and that although the said bills of exchange and promissory notes are signed by or on behalf of this deponent as the drawer thereof, *the same or any of them have not been delivered out of hands to the payees therein named, or any person on behalf, nor been deposited with any person as a security for the payment of money, nor been in any way negotiated issued, or put in circulation, nor been made use of in any other manner whatsoever and that the said bills of exchange have not been accepted by the drawees or tendered for such acceptance —And that such of the said bills and notes as are not dated were signed within the period of six calendar months preceding the date hereof* —

promissory notes Sect 14

And this deponent further saith that he hath not been reimbursed or paid the value of the said stamps, or any part thereof, by any other person or persons, and that if the value thereof shall be allowed by the Commissioners of Inland Revenue will not ask or receive any compensation for the same, or any part thereof, from any other person or persons, or charge the same, or any part thereof, in account or otherwise, to any other person or persons either generally or particularly, so as to be again paid or compensated for the same, or any part thereof, directly or indirectly, in any manner whatsoever

And this deponent further saith, *that his place of residence is not in London or Westminster, nor within ten miles thereof, and that all the said stamps except as aforesaid have been spoiled or become useless within the period of twelve calendar months preceding the date hereof* and that the application made by for an allowance for the value of the said stamps is without any fraudulent intention or collusion whatsoever

53 Geo III c. 108, s 16.

A B

Sworn at this day of 184 *before*

Ireland

The statute relating to spoiled stamps in *Ireland* is the 56 Geo III c 56, ss 43 *et seq* See "APPENDIX"

The allowance is made only at the Stamp Office in *Dublin*, the form of affidavit being the same as in *England*

Stamps.

UNDER this head will be arranged, in chronological order, the enactments, of a general nature, not extracted under separate titles, or for the details of which reference is made to any such titles.

5 Will. & Mary, c. 21.

Stamp duties first granted in England.

By this Act Stamp Duties were first imposed (for a temporary period, but afterwards made perpetual), throughout England, Wales, and Berwick-upon-Tweed; the same to be under the care and management of Commissioners to be appointed by their Majesties for the purpose, who were to keep their head office in some convenient place in London, or Westminster, and to appoint officers, and provide marks and stamps capable of making durable impressions, not liable to be forged, with which all vellum, parchment, and paper charged with such duties was required, on demand, and on payment of the duties, to be stamped, before any of the matters or things in respect of which the duties were payable were written thereon; such stamps to be published by proclamation.—See also "INSTRUMENTS," page 268.

Judges to make orders for securing the duties.

Sect. 12.—The Commissioners may appoint a person to attend in any Court, or office, to take notice of the vellum, parchment, and paper upon which any of the said matters or things shall be written, and of the stamps thereon. The Judges of the several Courts, and others to whom it may appertain, at the request of the Commissioners, to make such orders, and do such matters and things, for better securing the duties, as they shall be lawfully and reasonably required. A similar enactment is contained in the 9 Will. III. c. 25, s. 60.

Orders of the Treasury.

All parts of the kingdom to be supplied with stamps.

Sect. 13.—The Commissioners and their officers are to observe and perform such rules, methods and orders as they shall receive from the Treasury. And to take care that all parts of the kingdom, and Wales, and Berwick, be sufficiently furnished with stamped vellum, parchment, and paper, so that all persons may buy the same of the officers at the usual or most common rates above the duty, or bring their own vellum, &c., to be stamped. Similar provisions are contained in various subsequent Acts, granting additional duties.

Sect. 15.—To prevent frauds, all proceedings, deeds, and instruments to be written as they have been accustomed to be.—See "PROGRESSIVE DUTIES."

6 Will. III. c. 12.

The prices of vellum, &c., to be fixed.

Sect. 9.—The Treasury once a year, at least, to set the prices at which all sorts of stamped vellum, parchment, and paper shall be sold, the price to be stamped on each skin, &c. Similar enactments are contained in various subsequent Acts.

1 Anne, stat. 2, c. 22.

Writing in books without stamps.

Sect. 4.—Authorizing the writing of proceedings by public officers in unstamped books, or rolls, with the previous consent of the Commissioners.—See "PUBLIC OFFICERS."

10 Anne, c. 19.

Sect. 181.—The Commissioners may keep their Head Office in any of the Inns of Court, or the parishes of St. Andrew Holborn, St. Clement Danes, St. Paul Covent Garden, or St. Giles in the Fields, although not in the City of London or Westminster. See 12 Vict. c. 1. Head Office.

Sect. 182.—Any Commissioner, officer, or other person, concerned or employed in charging, collecting, receiving, or managing the duties, in any manner endeavouring to persuade any elector to give, or to dissuade him from giving his vote for any knight of the shire, &c. to forfeit 100*l.* and be disabled to hold any office or place of trust. Commissioners and officers not to interfere in elections.

12 Anne, stat. 2, c. 9.

Sect. 24.—As to writing several matters on one piece of vellum, &c. See "INSTRUMENTS," page 269. See Several matters.

6 Geo. I. c. 21.

Sect. 24.—If upon the trial of any action, &c. relating to any duties or penalties, any question shall arise as to the keeping of any office, or as to any defendant being an officer, proof shall be made of the actual keeping of any office, or the party being employed in any such office, respectively, before, or at the time when the matter in question shall have been done, or omitted, without proving the names of the Commissioners to any commission to be their handwriting, such proof shall be sufficient, unless the contrary appear. As to proof of being an officer.

11 Geo. I. c. 30.

Sect. 32.—If upon the trial of any information, action, or suit whatsoever, relating to any duties or penalties, or of any indictment, action, suit, or prosecution against any person for anything done under any Act relating to such duties, or of any information for resisting an officer, &c. proof be made that such person was reputed to be, and acted in, and exercised such office, when the matter in controversy was done or omitted, without producing or proving any deputation or authority, such proof shall be deemed sufficient, unless the contrary appear. See also the 26 Geo. III. c. 82. Further provision as to proof of being an officer.

30 Geo. II. c. 19.

Granting additional duties.

Sect. 18.—To prevent the multiplication of stamps on vellum, parchment, or paper, on which several duties are granted by different Acts, the Commissioners may provide one stamp to denote such several duties. A similar provision is contained in the 27 Geo. III. c. 13; and 43 Geo. III. c. 127. One stamp may be used to denote various duties.

26 Geo. III. c. 82.

Sect. 6.—If upon the trial of any information, indictment, or other prosecution for any felony relating to the stamp revenue, any question shall arise whether any person be an officer, or hath been employed to make any dies, or to repair, renew or alter the same, proof shall and may be made, and admitted, that such person was reputed to be, and had acted in, and, in fact, exercised such office, or employment when the matter in controversy shall happen to Further provision as to proof of officer and authority for making dies.

have been done, without producing or proving the particular commission, deputation or other authority whereby such officer was constituted, and in every such case such proof shall be deemed good evidence, unless the contrary appear. See further, 7 & 8 Geo. IV. c. 55, *post*.

37 Geo. III. c. 136.

As to stamping instruments.

Relating to the stamping of instruments not stamped, or having thereon stamps of improper denomination. See "INSTRUMENTS," page 270.

38 Geo. III. c. 85.

The duties to be charged on all materials whatsoever, as well as vellum, &c.

Sect. 4.—The duties chargeable on vellum, parchment, and paper, in respect of any matter or thing written thereon, to be charged upon *every other material* of what nature or kind soever, on which any of the said matters are written. See "INSTRUMENTS," page 271.

39 & 40 Geo. III. c. 84.

Attested copies may be stamped.

Authorizing attested copies to be stamped within sixty days without penalty. See "INSTRUMENTS," page 271.

44 Geo. III. c. 98.

Repealing all existing stamp duties, allowances, discounts, compensations, and drawbacks, and granting others in lieu, in England and Scotland, respectively, as stated in the schedules thereto; to be under the same provisions for raising, securing, &c., the same duties, as the former ones.

By whom penalties may be sued for.

Sect. 10.—No action or proceeding for any penalty under the Stamp Laws to be commenced except in the name of the Attorney-General or the King's Advocate, or an Officer of Stamp Duties. See "PENALTIES," page 515.

No single deed, &c. to be liable under two heads.

Sect. 11.—No single instrument, article, matter or thing by this Act subject or liable to only one specific duty, to be chargeable under any two, or more separate and distinct heads or denominations.

Sect. 14.—As to the persons who shall be allowed to draw conveyances. See "ATTORNEYS and SOLICITORS," page 102.

Penalty on stamping deeds, &c., may be remitted.

Sect. 24.—The Commissioners may remit the penalty payable on stamping a deed, &c. within 12 months. See "INSTRUMENTS," page 272.

48 Geo. III. c. 149.

Repealing the duties on deeds, &c., granted by the 44 Geo. III. c. 98, and granting others in lieu; with power to the Commissioners to use the old dies for denoting such new duties of the same amount, and to use two or more stamps for denoting the amount of one duty, until a single die is provided; but no stamp appropriated to denote the duty on any particular instrument, and bearing the name on the face, to be used for denoting any other duty.

Sect. 5.— Old stamps may be used for new duties. No single stamp to be used for two distinct duties, &c. See "INSTRUMENTS," p. 272, *ante*.

Sect. 8.—The powers, provisions, &c., contained in Acts relating to duties repealed, to be of full force and effect with respect to the new duties, so far as the same are applicable. Former provisions.

Sect. 48.—Reciting, that by the Act of Union certain exemptions from Stamp Duty were declared in favour of Scotland; and reciting, amongst other things, that it being reasonable that Scotland should have some other exemption, by way of equivalent for the amount of certain duties, therein mentioned, the duties payable in Scotland upon Charters of resignation, instruments of seisin, and other instruments in use there, for the completing or renovating of titles to land, and other heritable subjects, are, in the schedules thereto, reduced from 14*s.* to 7*s.* For preserving and securing such equivalent to Scotland, it is enacted that the said duties, so reduced, in Scotland shall not, at any time hereafter, be added to, or increased in any greater degree than the duties of 15*s.* charged in the said schedule on surrenders, and other instruments of or relating to copyhold lands in England; and, that if the said last-mentioned duties shall at any time hereafter be reduced, the said duties on charters of resignation, &c. shall also be reduced in the same degree. For securing to Scotland an equivalent for additional duties from which it was exempt by the Act of Union.

50 Geo. III. c. 35.

Sect. 13.—For rectifying mistakes made in the use of stamps on deeds. See "Spoiled Stamps," page 570. Spoiled stamps.

Sect. 16.—Instruments stamped with sufficient or excessive duty to be valid. See "Instruments," page 272. Excessive duty on deeds, &c.

53 Geo. III. c. 108.

Sect. 5.—Conveyances on sale relating, also, to other matters, to be stamped with further duty. See "Conveyance on Sale," p. 215, and the Table.

Sect. 20.—The Commissioners, under the authority of the Treasury, may stamp grants of, or appointments to offices, signed by the King, or the Treasury, on payment only of the duties, without penalty. Stamping government appointments.

Sect. 23.—In all actions, bills, plaints, informations, and proceedings in the name of his Majesty, or of any person on his behalf, for the recovery of any duties, debts, or penalties, granted or imposed, due or payable, by or under any Act or Acts of Parliament now in force relating to the duties under the management of the Commissioners of Stamps, or by or under this Act, his Majesty may have and recover such duties, debts, and penalties, with full costs of suit, and all charges attending the same. Duties and penalties may be recovered with costs.

Sect. 24.—The Commissioners may stay proceedings for the recovery of any penalty on terms. See "Penalties," page 516. Proceedings may be stayed.

55 Geo. III. c. 184.

Repealing the duties granted by the 48 Geo. III. c. 149, and certain of those granted by the 44 Geo. III. c. 98, and remaining in force, and granting others in lieu; with power for the Commissioners to provide dies, &c., and do all other acts and things for raising and collecting the new duties as the former ones. See the Table for such as are still payable. Present duties on certain instruments.

Sect. 4.—The stamps provided to denote former duties may be used for denoting the new duties of the same amount; and two or more stamps may be used to denote any one duty, until a single stamp be provided; and all instruments stamped with two or more stamps for denoting the amount of any Old stamps may be used to denote new duties, &c.

single duty charged thereon, to be as valid as if the same had been stamped with a single stamp for denoting such duty; but no stamp appropriated to denote the duty charged on a particular instrument, and bearing the name of such instrument on the face thereof, to be used for denoting any other duty of the same amount, or, if so used, the same to be of no avail.

Sect. 5.—Vellum, &c., stamped with former duties, or with former and new duties also, may be issued and used for instruments hereby charged; but no vellum, &c., bearing a stamp appropriated by name to a particular instrument to be used for any other.

Former provisions continued.

Sect. 8.—All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties, in any Act relating to the duties hereby repealed, and to any prior duties of the same kind or description, to be of full force and effect with respect to the duties hereby granted, and to the vellum, instruments, &c., charged therewith, so far as the same are applicable, in cases not hereby expressly provided for, and to be applied, enforced, and put in execution, for raising, &c., the new duties.

Sect. 10.—Stamps of wrong denomination but of sufficient amount to be good. See "INSTRUMENTS."

Sects. 52, 53.—Before whom affidavits relating to stamp duties may be made. See "AFFIDAVITS."

55 Geo. III. c. 185.

Certain new duties.

Repealing the duties on advertisements, almanacks, newspapers, plate, and stage-coaches imposed by the 44 Geo. III. c. 98, and granting others, of the same kind, in lieu; all of which (except those on plate) have since been, again, repealed. For the present duties, see TABLE.

1 & 2 Geo. IV. c. 55.

What instruments liable to duty.

As to the duties in Great Britain and Ireland respectively; and as to the instruments liable to stamp duties according to the place of their execution or operation. See "INSTRUMENTS," p. 273.

3 Geo. IV. c. 117.

As to transfers of mortgages. See "MORTGAGE."

Sect. 4.—Duties on appointments of officers in the customs on promotion. See the TABLE, title "GRANT."

6 Geo. IV. c. 41.

Duty on transfers of ships repealed.

Sect. 1.—Repealing the duties in Great Britain and Ireland upon bills of sales of ships. See the "GENERAL EXEMPTIONS," at the end of the TABLE, part 1.

Sect. 2.—Repealing the duties on Custom House and Excise Bonds, and on debentures for receiving drawbacks, and substituting others. For the present duties see the TABLE.

Penalty for including in one Customs or

Sect. 4.—If any agent or other person required by any Act of Parliament, or by the direction of the Commissioners of Customs, or Excise, or any of their officers to give, or enter into any bond for or in respect of any duties of customs

or excise, or for preventing frauds or evasions thereof, or for any matter or thing relating thereto, include in one and the same bond any goods or things *bonâ fide* belonging to more persons than one, not being co-partners, or joint tenants, or tenants in common, every such agent or other person for every such offence shall forfeit 50*l.*

Excise bond goods of more than one person 50*l.*

7 & 8 Geo. IV. c. 55.

By this Act the Board of Stamps for Ireland was abolished; the Commissioners of Stamps for Great Britain to be Commissioners for Ireland also. Commissioners for the United Kingdom to be appointed from time to time. The acts of all such Commissioners, or any three of them, to be valid throughout the United Kingdom, as those done by the Commissioners for each part thereof.

To be one Board of Stamps for the United Kingdom.

Sect. 5.—The Commissioners, under the authority of the Treasury, may delegate the powers vested in them to other persons, for the collection and control, &c., of the revenue in Ireland; the acts of such persons to be effectual.

Commissioners may delegate persons in Ireland.

Sect. 6.—If in any Court whatsoever, upon any indictment, information, trial, proceeding, or occasion whatever, and whoever shall be parties therein, any question shall arise concerning any Commissioner of Stamps, or any officer, or person acting, or employed under their authority or order, or concerning the right or title of any such Commissioner, officer, or person, to hold, exercise, enjoy, execute, or perform any office, duty or employment, it shall be sufficient to prove that any such Commissioner, officer, or person, was reputed to be, and did act as, and did, in fact, execute the office, or employment of such Commissioner, officer, or person, at the time when the matters in controversy shall have been done, or committed, or omitted, or neglected; and such proof shall be deemed and taken to be good and legal evidence, without producing, or proving the particular patent, appointment, commission, deputation, authority, or order whereby such Commissioner, officer, or person was constituted, appointed, or employed, and without any evidence being given that he had performed, or obtained the several requisites or authorities prescribed by law for enabling, or authorizing him to execute such office, &c.; unless, by other evidence, the contrary appear.

Evidence of being a Commissioner or officer.

Sect. 7.—Whenever, in any proceeding, by action of debt, bill, plaint, or information in any of the superior Courts in any part of the United Kingdom, or by civil bill, in any Court of any recorder, chairman, or assistant barrister in Ireland, or by information, or complaint before any Justice of the Peace, in any part of the United Kingdom, for the recovery of any stamp duty, or any fine, penalty, or forfeiture, under any Act in force relating to any duties under the management of the Commissioners of Stamps, any statement, allegation, or averment, shall be made, that any act, matter or thing, was done, or that any proceeding had been, or was taken, or that any licence, warrant, instrument, or authority was granted or signed, or that any notice was signed by the Commissioners of Stamps, or by any subordinate officer of stamps, or by any person or persons under and in pursuance of any Act in anywise relating to any duties under the management of the said Commissioners; or that any act, matter, or thing had been, or was done, or that any proceeding whatever had been or was taken by any such subordinate officer of stamps, or by any other person or persons under and in obedience to the orders and directions of the Commissioners of Stamps; or that any proceeding for the recovery of any penalty or forfeiture was commenced, prosecuted, entered, or filed, by, or by the order of any officer, or person thereto authorized by law, every and any such allegation, statement, or averment shall be, and be deemed and taken to

Any allegation that an act was done, or proceeding taken by the order of the Commissioners to be evidence of the fact.

be sufficient evidence of any and every fact so stated, alleged, and averred, without any other or further evidence of any such fact; unless, by other evidence, the contrary appear.

Appointments and securities to remain in force.

Sect. 8.—All appointments of officers, heretofore made, to remain in full force, and to be deemed good, as if made by the Commissioners of the United Kingdom; and all bonds and securities given by any officer, or by any person for securing payment of duties, to remain in full force.

Sect. 9.—Not to affect any bonds, covenants, deeds, or engagements made or entered into by any of the Commissioners, or officers, on behalf of his Majesty.

Commissioners to be under the same liabilities as before.

Sect. 10.—The Commissioners for the United Kingdom to be subject to the like liabilities, restraints, duties, obligations, and disabilities as the Commissioners, respectively, for each part, were before; and to the orders and control of the Treasury.

9 Geo. IV. c. 25.

Solicitors to Revenue Boards.

Whenever any person is appointed solicitor or attorney on behalf of the King, under the orders and directions of any Commissioners or other persons or person having the management of any branch of the revenue, such person may act and practise as such solicitor or attorney, under such orders and directions, in every Court, jurisdiction, and place in any part of the United Kingdom; anything, in any Act, order, rule, or usage, to the contrary notwithstanding.

3 & 4 Will. IV. c. 97.

For preventing the selling and uttering of forged stamps. See "Licence to sell Stamps," and "Forgery."

Hawking stamps or selling them where the party does not reside or trade.

Offender may be apprehended.

Sect. 14.—If any person, whether licensed to deal in stamps or not, hawk or carry about for sale, or exchange any stamped vellum, parchment, or paper; or, if any person utter, or offer for sale or exchange at any house, shop, or place other than the house or shop in which he shall reside or *bonâ fide* carry on his trade or business, any such stamped vellum, parchment, or paper, he shall forfeit 20*l.*, over and above any penalty to which he may be liable for vending or dealing in stamps without being licensed. And, moreover, any person, without any other warrant than this Act, may apprehend any such person, and take him, or cause him to be taken before a Justice of the peace, who shall hear and determine the matter; and if he shall not immediately pay the penalty, such Justice shall commit him to prison for any period not less than one nor more than three calendar months, unless such penalty be sooner paid. And all stamped vellum, parchment, and paper found in his possession shall be forfeited to his Majesty, and be taken possession of by such Justice, and delivered to the Commissioners of Stamps, to be disposed of in any manner they shall think fit. Provided, that if such offender be not apprehended and proceeded against in manner before directed, the said penalty shall be recoverable by any other way and means provided for the recovery of penalties by this Act.

Stolen stamps.

Sect. 15.—As to searching for stolen stamps, &c. See "Forgery."

Dies may be discontinued and new ones provided.

Sect. 16.—The Commissioners of Stamps may from time to time, whenever they shall deem it necessary or expedient, discontinue the use of all or any of the dies heretofore provided or used, or at any time hereafter to be provided or used, for denoting or marking any stamp duty by law payable for or in respect of any matter or thing whatsoever, and cause any new die or dies, with such altered device or devices, respectively, thereon, as they shall think fit, to be provided and used in lieu of the die or dies so discontinued.

New dies after notice in the

Sect. 17.—Whenever the Commissioners shall determine to discontinue the use of any die, and shall provide any new die to be used in lieu thereof, and

shall give public notice thereof by advertisement in the London and Edinburgh Gazettes, respectively, then from and after such day as shall be appointed by such advertisement, not being within one calendar month next after the same shall have been so published, the said new die shall be the only true and lawful die for denoting the duty chargeable in any case to which such die is applicable; and all instruments for the stamping of which any such new die shall have been provided, and which after the day so appointed shall be written upon vellum, parchment, or paper stamped with any other than the said new die, and also all such instruments as aforesaid which, having been written upon vellum, parchment, or paper stamped as last aforesaid, shall not have been executed or signed by any party thereto before or upon the said day so appointed, shall be deemed to be written on vellum, parchment, or paper not duly stamped as required by law: Provided, that in the case of any instrument required to be stamped with such new die which shall be written upon vellum, parchment, or paper stamped, otherwise than with such new die, and which, after the said day so appointed shall be first executed or signed by any party thereto at any place out of the United Kingdom, the said Commissioners may, and they are required, upon proof of the facts to their satisfaction, to cancel and allow the stamp or stamps impressed on such instrument, and to cause such instrument to be stamped with such new die to the same amount of duty, without payment of any penalty, provided such instrument shall be produced to them for the purpose aforesaid within one calendar month next after the same shall arrive in this kingdom.

Gazette to be the only lawful dies.

Deeds, &c. stamped with any other dies to be deemed not duly stamped.

Sect. 18.—As to the allowance of stamps rendered useless by any change of die. See "Spoiled Stamps."

Sects. 23, 24 & 25.—Penalties under this Act may be recovered in the superior Courts, and also before any magistrate, with an appeal to the sessions, and a power of mitigation.

Sect. 26.—Actions for anything done under this Act to be brought within three months, and be tried in the county where the cause shall arise. A month's notice to be given. The defendant may plead the general issue, &c., and tender amends, &c.

Actions for matters under this Act.

4 & 5 Will. IV. c. 60.

Sect. 8.—The Commissioners of Stamps for the United Kingdom, and the Commissioners for the affairs of Taxes in Great Britain, respectively, to become one consolidated Board, and be called "The Commissioners of Stamps and Taxes." The King, his heirs and successors, may from time to time appoint other persons to be Commissioners of Stamps and Taxes. The duties, matters and things heretofore collected by, or under the care and management of each Board, respectively, to be, in the same manner collected by, and be under the care, &c., of the consolidated Board.

Consolidation of Boards of Stamps and Taxes.

Sect. 9.—The Commissioners of Stamps and Taxes, or any three of them, to have, use, and exercise all such powers and authorities as are given to, or vested in, or might be used and exercised by the whole or any number of each Board under any Acts in force; and all such powers and authorities to be vested in the Commissioners of Stamps and Taxes, and any three of them, as fully and effectually as if the same, and all clauses, regulations, provisions, penalties and forfeitures in any Act relating thereto were repeated, and re-enacted in this Act; and all rules, orders, acts, matters and things made or done by the Commissioners of Stamps and Taxes, and which are authorized or required to be or might be made or done by the separate Boards, to be as valid as if made or done by either of such Boards; and all persons to be liable to the same pains and penalties for doing or omitting any act, contrary to any rules, &c., of the Commissioners of Stamps and Taxes, as they would have been for doing or omitting any act contrary to the rules, &c., of such separate Boards: Provided, that where any act, matter, or thing is required to be

The consolidated Board to have same powers as each separate Board.

done by any particular number of Commissioners, the same, being done by the same number of Commissioners of Stamps and Taxes, to be valid; and all rules, orders, and regulations heretofore made by each separate Board, not hereby altered, to continue in force until abrogated or altered by the Commissioners of Stamps and Taxes.

Appointments to remain in force.

Sect. 10.—All commissions, deputations, and appointments, heretofore granted by each Board, to remain in force until revoked by lawful authority.

And securities.

Sect. 11.—All securities heretofore given for securing any of the duties under the care and management of each Board, or for any other purpose, to continue in force, and be deemed to extend to the duties under the care and management of the consolidated Board; and whenever mention is made in any security, or any Act, of the separate Commissioners, or any receiver, or officer, the same to be deemed to apply to, and mean the Commissioners of Stamps and Taxes, and the receiver or officer of the duties under their care.

5 & 6 Will. IV. c. 20.

Consolidation of Offices.

Sect. 1.—The offices of Receiver General of Stamp Duties and Receiver General of Land and Assessed Taxes to be consolidated. The officer to be termed "The Receiver General of Stamps and Taxes."

Sect. 2.—The offices of Accountant and Comptroller General of Stamp Duties, and Comptroller of Accounts of Land and Assessed Taxes, to be consolidated. The officer to be termed "The Accountant and Comptroller General of Stamps and Taxes."

Sect. 3.—Such persons to hold their offices during the pleasure of the Crown; and when they become vacant the Treasury to nominate to them; every person so to be nominated to hold office during the pleasure of the Treasury.

Sect. 4.—The said officers respectively, to have, use and exercise all the powers and authorities vested in the separate officers.

Sect. 5.—All stamp duties, and all duties of land and assessed taxes, and compositions for assessed taxes to be paid or remitted to the Commissioners or the said Receiver General.

Sect. 12.—Not to affect any bonds already given.

5 & 6 Will. IV. c. 64.

The Treasury may compound with the East India Company for the duties on their bonds.

Sect. 4.—The Treasury may compound with the East India Company for the payment of an annual sum in lieu of the stamp duties on the bonds made and issued by the Company for the payment of any definite and certain sum of money; such annual sum to be paid to the Receiver General of Stamps and Taxes by two half-yearly payments, as the Treasury shall appoint, and be secured by the bond of the Company; which bond is exempted from stamp duty. Such composition to be made for any term not exceeding five years, and be renewable upon payment of any sum as may be agreed upon. All such bonds of the Company, made and issued during any such terms of contract, to be freed and exempted from stamp duty.

Duties on certain instruments relating to the Company.

Sect. 5.—Every transfer of any part of the territorial debt of the East India Company in India, made in the books of the Company in England, whether upon sale or otherwise, to be chargeable with a stamp duty of 1*l.* 10*s.* and no more.

Sect. 6.—Letters of attorney for voting in any election of a Director or Directors of the East India Company to be exempted from stamp duty.

Second admission to Inn of

Sect. 7.—Where any person admitted a member of any one of the four Inns of Court in England is, afterwards, admitted a member of any other of the said

Inns, the latter admission to be free of duty, provided he shall have paid the proper stamp duty on his former admission. Court to be free of duty.

6 & 7 Will. IV. c. 28.

This Act authorizes a deposit of stock in lieu of giving security by bond in revenue matters. Extended by 1 & 2 Vict. c. 61. Deposit of stock.

1 & 2 Vict. c. 35.

As to duties on admissions to freedom. See "ADMISSIONS TO CORPORATIONS AND COMPANIES." Admissions to freedom.

1 & 2 Vict. c. 85.

British stamps may be used in Ireland, and *vice versâ*. See "INSTRUMENTS," pp. 275, 278, *ante*. British and Irish stamps.

4 Vict. c. 21.

For rendering a release as effectual as a lease and release. See "INSTRUMENTS," p. 275, *ante*. Lease and release.

4 & 5 Vict. c. 34.

Declaration as to affidavits used in Courts, &c., being exempt from stamp duty. See "AFFIDAVITS," p. 17, *ante*. Affidavits in Courts.

5 & 6 Vict. c. 79.

Granting new duties in certain cases, as contained under various heads in the TABLE. New duties in certain cases.

Sect. 22.—Where any person is admitted to any Inn of Court in England, and also to King's Inns in Dublin, the duty on the former admission to be returned. See "SPOILED STAMPS." Allowance on admissions to Inns of Court.

6 & 7 Vict. c. 72.

Granting duties on certain ecclesiastical preferments, and on certificates of registration of designs. See the TABLE.

Sect. 2.—The certificate of the Ecclesiastical Commissioners for ascertaining the value of any benefice, as required by the 5 & 6 Vict. c. 79, [see "COLLATION" in the TABLE,] for the purpose of charging the proper stamp duty, shall be written upon the instrument of donation, presentation, or collation charged with such duty; and where institution shall proceed upon the petition of the patron to be himself admitted and instituted, it shall be written upon the instrument of institution charged with duty; and no such instrument shall be used, or be available, unless, nor until such certificate shall be so written. Certificate of value of any benefice to be indorsed on the instrument of donation, &c.

7 Vict. c. 21.

Certain duties repealed.

Repealing the duties on certain policies of sea insurances, agreements, and letters of attorney, and granting others in lieu. See the TABLE.

Proxies charged with reduced duties to authorize the voting at one meeting only.

Sect. 6.—Any letter of attorney, or other instrument for appointing or nominating a proxy chargeable with duty under this Act, [*viz.* a proxy to vote at any meeting of the proprietors or shareholders of or in any joint-stock company, or other company or society whose stock or funds are divided into shares, and transferable,] shall authorize such proxy to vote upon any matter at one meeting of the proprietors or shareholders of or in any company or society, the time of holding whereof shall be specified in such instrument, or at any adjournment of such meeting; and no such letter, or power of attorney or other instrument shall be further or otherwise available.

Proxies not to be stamped after they are signed.

Penalty for signing or voting under an unstamped proxy, 50*l.*

Sect. 7.—The Commissioners or any other officers are not to be at liberty, under any pretence whatever, to stamp, after the signing thereof by any person, any vellum, parchment, or paper upon which any such letter or power of attorney, or proxy is engrossed, written, or printed; and if any person make or sign any such letter of attorney, written, &c., on vellum, &c., not duly stamped; or vote, or attempt to vote under the same, every such person shall forfeit 50*l.*, and every such vote shall be void.

Sect. 8.—Also repealing the duties on Custom House and Excise bonds, given on obtaining debentures for receiving drawbacks. See the TABLE.

8 & 9 Vict. c. 76.

For granting duties on licences to appraisers in the United Kingdom; and on registry searches in Ireland; and to amend the law relating to the duties on legacies. See TABLE.

8 & 9 Vict. c. 106.

To amend the law of real property. See "INSTRUMENTS."

12 Vict. c. 1.

Inland revenue.

To consolidate the Boards of Excise and Stamps and Taxes into one Board of Commissioners of Inland Revenue, and to make provision for the collection of such revenue.

The Boards of Excise and Stamps and Taxes consolidated.

Sect. 1.—The several persons now being Commissioners of Excise and Commissioners of Stamps and Taxes respectively, without any further Commission or authority than this Act, to become and be one consolidated board of Commissioners, and be called "The Commissioners of Inland Revenue;" and all the several revenues, duties, matters, and things which are collected by or are under the care and Management of the said Commissioners of Excise and Stamps and Taxes respectively to be collected by and be under the care and management of the Commissioners of Inland Revenue constituted by this Act, or to be appointed as hereinafter directed, as they have been collected by or have been under the care and management of the said Commissioners respectively; and all such revenues and duties to be denominated and be deemed to be inland revenue.

Sect. 2.—Her Majesty may from time to time appoint, under the Great Seal of the said United Kingdom, such persons as she shall think fit to be Commissioners of Inland Revenue; the same as well as those by this Act constituted to remain Commissioners during her Majesty's pleasure.

The Queen may appoint other Commissioners.

Sect. 3.—The Commissioners of Inland Revenue to have, use, and exercise all the powers and authorities, judicial and otherwise, now vested in, or used and exercised by the whole or any number of the said Commissioners of Excise or of Stamps and Taxes respectively; and all rules, orders, regulations, acts, matters, and things to be made or done by the said Commissioners of Inland Revenue, and which might be made or done by the Commissioners of Excise, or of Stamps and Taxes, or any number of them respectively, to be as good, as if made or done by the said Commissioners, or any number of them respectively; and all persons to be liable for doing or omitting to do any thing contrary to any regulations of the Commissioners of Inland Revenue, as they would have been for doing or omitting to do the same contrary to any regulations of the Commissioners of Excise or of Stamps and Taxes respectively, and all regulations made by the said Commissioners of Excise or of Stamps and Taxes respectively in force, and not altered by this Act, or contrary to the provisions thereof, to continue in force until annulled, or varied by the said Commissioners of Inland Revenue.

Powers of respective Commissioners to be exercised by the Commissioners of Inland Revenue.

Sect. 4.—All the powers and authorities by this Act or hereafter given to the Commissioners of Inland Revenue, are hereby given to and vested in, and may lawfully be used, exercised, and put in force by any three or more of them: provided, that where by any Act or otherwise any thing is expressly directed or authorized to be done by any number less than three of the Commissioners of Excise or Stamps and Taxes, or shall hereafter be by less than three of the Commissioners of Inland Revenue, the same being done by such number shall be good.

Powers may be exercised by any three of the Commissioners.

Sect. 5.—The Commissioners of Inland Revenue to keep their chief office at such place as the Treasury shall from time to time appoint, within the limits described, as the limits of the chief office of excise by the 7 & 8 Geo. IV. c. 53; such office to be deemed and called "The Chief Office of Inland Revenue;" the said limits to be the limits of the said Chief Office of Inland Revenue for all the purposes for which they are the limits of the Chief Office of Excise.

Chief office.

Sect. 6.—The two offices of Receiver General of Excise and Receiver General of Stamps and Taxes are hereby consolidated into one office and vested in the person in whom the said two several offices are now vested; and such person, and every person hereafter appointed to the office to be termed "The Receiver General of Inland Revenue," and to hold his office during the pleasure of the Treasury.

Office of Receiver General.

Sect. 7.—The like consolidation and tenure of the two several offices of Accountant General of Excise and Accountant and Comptroller General of Stamps and Taxes, the person now, or hereafter to be appointed to be termed "The Accountant and Comptroller General of Inland Revenue."

Office of Accountant General.

Sect. 8.—The said Receiver General of Inland Revenue and Accountant and Comptroller General of Inland Revenue to have all the powers and authorities as are vested in the Accountant General of Excise and the Accountant and Comptroller General of Stamps and Taxes respectively.

Powers of Receiver and Accountant General.

Sect. 9.—The Treasury may abolish the office of Comptroller and Auditor of Excise created under the 4 Vict. c. 20; and when the said office shall be so abolished so much of the said Act as directs that the Accountant General of Excise shall annually pass before the said Comptroller and Auditor of Excise Accounts of the Revenue of Excise to be repealed; and the accounts of the duties of excise from and after such abolition to be rendered to the Commissioners for auditing the public accounts, as other public accounts are now rendered and passed; the said Commissioners for that purpose, to have all the powers and authorities now possessed by them as such Commissioners.

Office of Comptroller and Auditor of Excise may be abolished.

Appointments of officers to remain in force.

Sect. 10.—All appointments granted to any officers of excise or stamps and taxes and now in force, to continue until revoked; and the persons holding them to have full power and authority to execute their offices as before; and all officers holding their offices during the will and pleasure of the Commissioners of Excise, or of Stamps and Taxes, to hold the same, subject to the will and pleasure of the Commissioners of Inland Revenue, and be deemed to be officers of inland revenue.

Securities to remain in force, and to extend to all duties.

Sect. 11.—All bonds and securities heretofore given, or entered into by any persons whatsoever, either as principals or sureties, for securing the due accounting for or the payment of any duties under the Commissioners of Excise, or Stamps and Taxes, or for the good conduct of any person, or for any other purpose relating to the said duties, to continue in full force and effect; and to extend to all revenues, duties, matters, and things under the Commissioners of Inland Revenue.

Deposits of stock.

Sect. 12.—The provisions of the 6 & 7 Will. IV. c. 28, and 1 & 2 Vict. c. 61, relating to the deposit of stock, to extend to the revenues, duties, matters, and things now or hereafter under the Commissioners of Inland Revenue; and any stock or exchequer bills hereafter required to be transferred or deposited with relation to any of the revenues, duties, matters, or things aforesaid, may be transferred or deposited by or on behalf of the person or persons or body corporate from whom such security may be required, into, or in the name of the chairman for the time being of the Commissioners of Inland Revenue, and into or in the name or names of such person or persons or body corporate, or of any person or persons appointed by him or them.

Transfer of stock now deposited.

Sect. 13.—And any stock or exchequer bills now standing in the name of the chairman of the Commissioners of Excise or of Stamps and Taxes, and of any other person or persons, the chairman for the time being of the Commissioners of Inland Revenue may sell and transfer, or re-transfer or deliver up, upon the certificate of any two or more of the Commissioners of Inland Revenue, as the chairman of the Commissioners of Excise or of Stamps and Taxes might have done if this Act had not been passed.

Sect. 14.—Property now vested in the Secretary of Excise in trust for the public service to be vested in the Secretary of Inland Revenue upon the like trusts.

Commissioners may appoint officers to receive any branches of revenue.

Sect. 15.—The Commissioners of Inland Revenue may appoint from time to time, such of the persons appointed or to be appointed collectors or officers for the receipt of any branch of the revenues under their care as they shall think proper to be also collectors or officers for the receipt of any or all of the other branches for such counties, districts, or circuits, as they shall appoint in that behalf; which collectors and officers shall have all the powers and authorities vested by law in the several collectors and officers for the receipt of the same revenues and duties respectively.

Licences may be granted by officers.

Sect. 16.—All licences required to be taken out and obtained from the Commissioners of Excise and Stamps and Taxes, respectively, by persons carrying on certain trades, &c., or dealing in certain goods, or keeping or using certain articles, and by other persons and for other purposes, may lawfully be granted and signed by such person or persons as the Commissioners of Inland Revenue shall appoint or authorize in that behalf: and such licences to be as valid as if granted or signed by the said Commissioners of Inland Revenue, or any number of them.

Construction of terms.

Sect. 17.—In all Acts of Parliament, bonds and securities, deeds, or other instruments, or writings, rules, orders, or regulations, (where necessary, and not repugnant or inconsistent,) in lieu of the several terms and expressions, "Commissioners of Excise," "Commissioners of Stamps and Taxes," "Commissioners of Stamps," and "Commissioners for the Affairs of Taxes," respectively, the term "Commissioners of Inland Revenue," to be substituted; in lieu of "Secretary of the Commissioners of Excise," and "Secretary of the Commissioners of Stamps and Taxes," the term "Secretary of the Commis-

sioners of Inland Revenue" to be substituted; in lieu of "Solicitor of Excise," "Solicitor of Stamps and Taxes," and "Solicitor of Stamps," the term "Solicitor of Inland Revenue," to be substituted; in lieu of "Receiver General of Excise," "Receiver General of Stamps and Taxes," and "Receiver General of Stamp Duties," the term "Receiver General of Inland Revenue," to be substituted; in lieu of "Accountant General of Excise," and "Accountant and Comptroller General of Stamps and Taxes," the term "Accountant and Comptroller General of Inland Revenue," to be substituted; in lieu of "Chief Office of Excise," "Head Office for Stamps and Taxes," and "Head Office for Stamp Duties," the term "Chief Office of Inland Revenue," to be substituted; and in all proceedings, every such Act, bond, security, deed, instrument, writing, rule, order, or regulation, may, if necessary, be pleaded, as if such substituted terms were inserted therein.

12 & 13 Vict. c. 106.

To amend and consolidate the laws relating to bankrupts. Bankruptcy.

Sect. 8.—The Commissioners of the Court of Bankruptcy, or any eight of them, of whom the senior commissioner to be one, may make rules and orders for carrying this Act into execution, such rules and orders being approved by the Lord Chancellor.

Stamps in lieu of fees.

Sect. 48.—Every document in Schedule C. annexed to the Act, in lieu of all fees thereupon, to be printed or written upon vellum, parchment, or paper, bearing the stamp duty set opposite thereto, and having the word "Bankruptcy" on the stamp: Provided, the first sheet only to be stamped. See TABLE for these duties.

Commissioners to keep separate accounts of such stamps, &c.

Sect. 49.—The Commissioners of Inland Revenue to give the necessary directions for carrying into effect the provisions of the Act with respect to such stamp duties. To keep distinct accounts of sums received, and of all costs, charges, and expenses incurred; and, after deducting the latter, pay over the money as may be directed by any general rule or order to be made in pursuance of the Act, to the Bank of England, to the credit of the Accountant in Bankruptcy, to the account intituled, "The Chief Registrar's Account."

May appoint persons for sale of stamps.

Sect. 50.—The Commissioners of Inland Revenue may appoint persons for the sale and distribution of the stamps, and allow such discount or poundage as may by any general rule or order made in pursuance of the Act be authorized. By any such general rule or order regulations may be made for the allowance of stamps spoiled or rendered useless, or unfit for the purpose intended, or for which the owner may have no immediate use, or which, through mistake or inadvertence, may have been improperly or unnecessarily used, such allowance to be either by giving other stamps in lieu, or by repaying the amount after deducting the discount allowed on the sale of stamps of the like kind.

Provisions of Stamp Acts to apply.

Sect. 51.—The provisions contained in the Stamp Acts (so far as they are applicable and consistent) to be of full force with respect to the stamps under this Act, for collecting and securing the duties, and preventing frauds, forgeries and other offences.

No document to be used without a stamp.

Sect. 52.—No document required to be stamped to be received or filed without a stamp. Provided that if by mistake or inadvertence, any such document has been so used or filed without a stamp, the Court may order it to be stamped.

Ireland.

For such provisions as relate to instruments, and stamps in general in Ireland, not contained in the before-mentioned statutes, see the 56 Geo. III. c. 56, and 5 & 6 Vict. c. 82, in the "APPENDIX."

Surrender.

Release. Renunciation. Disclaimer.

A SURRENDER (not falling under any other head in the Stamp Act, that is, as there expressed, "not otherwise charged,") of any term or terms of years, or of any freehold or uncertain interest in any lands, &c., not being of copyhold or customary tenure, is charged with a stamp duty of 1*l.* 15*s.*

A RELEASE and RENUNCIATION of lands or other property, or any interest therein, (not otherwise charged,) has, likewise, the same duty imposed upon it. Previously to the 44 Geo. III. c. 98, no instrument having the operation of any of these here mentioned was subject to any stamp duty unless it was a deed, there being no specific duty thereon (*a*). Under the present Act, whether it be a deed or not, the duty is the same. In case of a sale it will be chargeable with *ad valorem* duty under the head "CONVEYANCE."

An agreement to deliver up land is a surrender if it be not executory.

In an action of trespass, for taking certain farming stock, &c., under an execution against one *Palmer*, it appeared, that *Palmer* was a tenant of the plaintiff, and that by a written instrument he had agreed to deliver up the immediate possession of the principal part of the farm to the plaintiff, who, in consideration thereof, agreed to purchase the stock at a valuation, *Palmer* to be permitted to hold over half of the house, and have joint use of the yard up to January ensuing. This instrument was stamped as an agreement; but it was held to be a surrender, and liable to stamp duty as such; that an absolute surrender and an agreement to surrender must bear the same construction (*b*). In this case the agreement was not executory, and was not, therefore, to be distinguished from an absolute surrender. But where the surrender was not immediate, but was to take effect, at a future period, on the performance of a certain condition, the distinction was taken by the Court, as in the following case.

An agreement to surrender on performance of a certain act is not a surrender.

An agreement was made to sell, or to divide certain lands to which two of the parties thereto were entitled; that thereupon 100*l.* should be paid to the tenant, a party to the instrument, for his losses, upon his giving up possession at Michaelmas following,

(*a*) See *Farmer dem. Earl* v. *Rogers*, 2 Wils. 27.

(*b*) *Williams* v. *Sawyer*, 6 Moore, 226; 3 B. & B. 70.

which he agreed to do. This agreement was stamped with 20*s.*; but it was contended that it was liable to 35*s.*, as a surrender; the Court, however, held that it could only operate as a surrender, if at all, on payment of 100*l.*; and that the stamp must be affixed according to the manner in which the instrument operated at the time it was executed (*c*).

Disclaimer except by deed not liable.

A distinction appears to be taken between a surrender or renunciation of property, or any right or interest therein, and a mere disclaimer or renunciation of title, the latter not being liable to duty, unless it be a deed, in which case it will be chargeable under that head.

An instrument purporting to be a surrender as well as a disclaimer cannot be used to show the latter unless it be stamped.

In *Doe dem. Wyatt* v. *Stagg* (*d*) the following instrument was admitted in evidence, without a stamp:—"We, the executors, &c., of *J. C.*, do hereby renounce and disclaim, and also surrender and yield up unto, &c., all right, title, interest, &c., term and terms of years whatsoever, and possession of and in all that messuage, &c." On motion for leave to enter a nonsuit the Court held it to be a surrender, and not simply a renunciation or disclaimer of title; and, therefore, inadmissible for want of a stamp. It seems that the instrument was wanted to be used as a mere disclaimer, and not at all as a surrender; but it was objected that the case was stronger than that of *Williams* v. *Sawyer*, the word "surrender," being in the document; that it could not be applied to a secondary object, when the primary object was one that required a stamp; and *Corder* v. *Drakeford* (*e*) was referred to for the purpose of showing that an instrument could not be used for one object where it was liable to stamp duty, but not stamped, for another, and a leading object. The Lord Chief Justice (*Tindal*) said he should be very willing, if he could do it, for the purpose of attaining the ends of justice, to construe the instrument as a simple renunciation of title, but from what appeared on the record he could not consider it in any other light than a surrender. And Mr. Justice *Coltman* observed that the paper might, perhaps, have the effect contended for if it were admissible, but that it was not admissible for want of a stamp. See *Brink* v. *Winguard*, p. 197, *ante*.

Surrender of land must be by deed.

It may be proper to remark here that by the 8 & 9 Vict. c. 106, no surrender in writing of an interest in any tenements or hereditaments (not copyhold, and not being an interest which might by law have been created without writing), is valid unless it be by deed.

(*c*) *Weddall* v. *Capes*, 1 M. & W. 50; Tyr. & G. 430; 1 Gale, 432.

(*d*) 9 L. J. R. (N. S.) C. P. 73; 3 Jurist, 1981.

(*e*) Page 342, *ante*.

Probate and Legacy Duties.

THE STAMP DUTIES on instruments, in general, may be said to be left to take care of themselves; the safeguard of the revenue consisting, rather, in the simple enactment, whereby the efficacy of an instrument, not duly stamped, is withheld, than in the imposition of penalties for evading the duty; and, thus, questions, as to the sufficiency of the stamp, arise, on all occasions, in proceedings between the parties, by whom, alone, they are discussed. To a certain, but very limited extent, this remark is applicable to the duties on probates and letters of administration (both of which are to be understood as comprehended under the general term "Probate duty," in this work); for the most part, however, the case is otherwise, as well with regard to probate as to legacy duty, the point lying between the Crown and the party; and this attendant distinction will occasion a difference in the mode of treating the subject of the different duties, inasmuch as, in the exposition of the laws relating to probate and legacy duties, the writer will consider it incumbent on him to refrain, for obvious reasons, as far as possible, from obtruding any argument or opinion of his own upon the notice of the reader; a remark will, however, of necessity be, now and then, called for.

It frequently happens, that in discussions upon questions relating either to probate, or to legacy duty, the two duties, as well as the peculiar enactments applicable to them respectively, are confounded; they are, generally, classed together; they are found in the same schedule to the stamp acts, to the exclusion of all other duties; and they are, in most cases, payable in respect of the same property, although the charge is not always co-extensive; but they are perfectly distinct, both in their nature, and in the mode of paying them; and in no instance does the same enactment apply, expressly, to both. One is an *ad valorem* duty on a legal instrument, to be denoted by a stamp thereon; the other is a direct charge upon the property itself, to be paid, immediately, to the revenue. The legislative, as well as popular association between them, and their position in the schedule of duties have, however, led the writer thus to place them under one general head, and to treat of them in the same relative position as they occupy in the schedule, instead of ranging them in their proper alphabetical order in the work.

Probate Duty.

5 Will. & Mary, c. 21.	23 Geo. III. c. 58.
9 Will. III. c. 25.	29 Geo. III. c. 51.
19 Geo. III. c. 66.	35 Geo. III. c. 30.

By the above Acts duties (since repealed) were granted on probates of wills and letters of administration.

37 Geo. III. c. 90.

By this Act additional duties were granted.

Sect. 10.—Every person administering the personal estate of any person dying, or any part thereof, without proving the will of the deceased or taking out letters of administration within six calendar months of the death of the person so dying, to forfeit 50*l.* See further provision in 55 Geo. III. c. 184, s. 37.

Administering without probate, &c.

39 & 40 Geo. III. c. 72.

Sect. 16.—Reciting that it is expedient that the Commissioners of Stamps should be empowered to allow to any person who has obtained probate or letters of administration through inadvertence or mistake, the full value in other stamps of the amount of the duty thereon, so that no person should pay the stamp duty more than once, enacts as follows:—

Stamp to be allowed where will proved and duty paid more than once.

Where proof on oath is made to the satisfaction of the said Commissioners (which oath any one of them may administer) that any will has, through inadvertence or mistake, been proved, or that any letters of administration have been taken out on the same property in more than one Court, or more than once in any Court, and that by reason thereof more than one stamp duty has been paid thereupon, the Commissioners may, upon delivery to them of the useless probate or letters of administration to be cancelled, and, on production of the valid probate or letters of administration, cancel such useless probate or administration, and deliver other stamps of the like denomination and value.

41 Geo. III. c. 86.

Granting additional duties.

Sect. 3.—Reciting that it is expedient that the duties should not be paid more than once on the same estate, enacts as follows:—

The Commissioners shall, and they are hereby required to provide a stamp, distinguishable from all others, for the purpose of stamping any vellum, &c., on which any probate or letters of administration shall be engrossed, printed or written in relation to any estate in respect whereof any probate or letters of administration shall have been before taken out, and the full amount of the duties payable thereon by any Act or Acts then in force according to the full value of such estate duly paid and discharged; and in every case where any

Denoting stamp for second probates, &c.

probate or letters of administration shall have been taken out, duly stamped according to the full value of the estate in respect whereof the same shall have been granted, then any further or other probate or letters of administration at any time thereafter applied for in respect of such estate shall be issued and granted upon vellum, &c., stamped with the stamp provided under this Act; every such probate or letters of administration to be as available as if stamped with the stamp denoting the full amount of duty payable thereon.

41 Geo. III. c. 98.

All stamp duties repealed, and others, including duties on probates and administrations, granted instead; the provisions of former Acts to be applied thereto.

Sect. 23.—Executors, &c., in Scotland to exhibit inventories in the Commissary Courts, the same to be recorded. See provision in lieu of this in 48 Geo. III. c. 149, s. 38.

48 Geo. III. c. 149.

The last-mentioned duties repealed, and others granted in lieu, and the powers, provisions, &c., of former Acts directed to be applied in respect thereof.

No duty on trust property.

Sect. 35.—Any probate or administration to be available for recovering, transferring or assigning any property whereof the deceased was trustee, although not included in the amount for which the stamp duty was paid.

On transfer, &c., of trust property affidavit of the facts may be required.

Sect. 36.—Where executors or administrators desire to transfer or receive dividends of trust property in the Government Funds, or the Stock and Funds of the Bank of England, or any other Company passing by transfer in their books, the Bank or Company may require an affidavit or affirmation as hereinafter mentioned, unless the fact otherwise appear. And where they have occasion to recover or transfer debts or effects, and allege the like, the person liable to pay or about to accept such transfer may require such affidavit or affirmation, if the fact do not otherwise appear, and thereupon such payment or transfer may be made, without regard to the duty paid.

By whom, and of what particulars affidavits to be made.

Sect. 37.—Upon any such requisition, the executors or administrators, or some other person, to make a special affidavit or affirmation of the facts, stating the property, and that the deceased had no other beneficial interest therein than is mentioned (as the case may be) but was possessed thereof in trust for some other person to be named, and for the purposes therein specified, and that the beneficial interest of the deceased, if any, does not exceed a certain value to be specified, and that the amount of the estate for which the stamp duty was paid is sufficient to include such interest as well as the rest of the personal estate, and where the affidavit or affirmation is made by any other person, the executors or administrators also to make affidavits that they believe it to be true, and that the property in question is intended to be applied and disposed of accordingly. The same to be made before a Master in Chancery, ordinary or extraordinary, and delivered to the parties requiring the same, and be a sufficient indemnity.

Executors, &c., in Scotland to exhibit and record inventory.

Sect. 38.—Every person who, as executor or otherwise, shall intromit with, or enter upon the possession or management of any personal or moveable estate or effects in Scotland, of any person dying, shall on or before disposing of or distributing any part of such estate, or uplifting any debt, and at all events within six months next after having assumed such possession or management, and before he shall be confirmed executor, testamentary or dative, exhibit on oath or affirmation in the proper Commissary Court, a full and true inventory, duly stamped, of all the personal or moveable estate and effects of the

deceased, already recovered or known to be existing, distinguishing what shall be situated in Scotland, and what elsewhere, together with any testament or other writing relating to the disposal thereof which the person exhibiting the inventory shall have in his custody or power; such inventory, together with the testament or other writing, if any, to be recorded on payment of the ordinary fees of registration; and if, afterwards, a discovery of other effects is made, an additional inventory of the same to be, within two calendar months, in like manner exhibited and recorded. And any person refusing or neglecting to exhibit any such inventory within the time prescribed, or knowingly omitting any part of the estate therein, to forfeit 20*l.*, to be recovered before any Justice of the peace, who may mitigate the penalty to not less than a moiety, besides costs. And the person offending to be also chargeable with double the amount of the duty which would have been payable on the inventory neglected to be exhibited, according to the amount or value of the effects which ought to have been specified therein; or double the amount of the further duty which would have been payable in respect of the effects omitted in any inventory exhibited; such double duty to be a debt due to his Majesty.

Additional inventory.

Penalty for any default.

Sect. 39.—Every such inventory to be retained by the Clerk of the Court, and transmitted from time to time, as often as required, together with the affidavit relating thereto, to the Solicitor of Stamps at Edinburgh, to be filed and preserved. And any clerk failing to record, retain or transmit any such inventory, or receiving or recording any inventory not duly stamped, to forfeit 50*l.*

Inventories to be sent to the Solicitor of Stamps.

Sect. 40.—Any such additional inventory to specify also the amount or value of the effects in any former inventory or inventories, and the stamp duty chargeable on such additional inventory to be the *ad valorem* duty in respect of the total amount of the effects therein specified, and in any former inventory or inventories; and upon such additional inventory being recorded and transmitted, the Solicitor of Stamps to deliver out the former inventory, with a certificate thereon that an additional inventory, duly stamped, has been delivered; such certificate to entitle the party to receive the amount of the former inventory from the distributor of stamps at Edinburgh, who is to pay the same on a proper receipt and the inventory being delivered to him.

Additional inventory to include former property.

Former duty to be returned.

Sect. 41.—Provided, the duty on such inventories to be payable only in respect of the effects in Scotland.

Effects in Scotland only.

Sect. 42.—No Commissary Court to grant confirmation of any testament, testamentary or dative, or eik thereto, of or for any estate of any person, unless the same be mentioned and included in some inventory exhibited and recorded as aforesaid; and no executor or other person to be competent to recover any debt or other effects in Scotland, unless the same have been included in some such inventory, exhibited and recorded, except the same were vested in the deceased as a trustee for any person and not beneficially; but not to prejudice the law regarding confirmations, or the rules of succession.

Confirmation of testament to be granted only of estate in inventory.

53 Geo. III. c. 108.

Sect. 19.—Where any additional inventory, exhibited pursuant to the last Act, would not be liable to a greater amount of duty than that paid under a former inventory, such additional inventory to be exempt from stamp duty. See also Exemptions in the TABLE.

Exemption.

55 Geo. III. c. 184.

The duties granted by the 48 Geo. III. c. 149, repealed, and others granted in lieu, for which see TABLE.

Sect. 8.—The powers, provisions, &c., of former Acts to be applied for raising, levying, collecting and securing the new duties.

Former Acts.

Administering without probate, &c.

Sect. 37.—If any person take possession of, and in any manner administer any part of the personal estate and effects of any person deceased, without obtaining probate of the will or letters of administration within six calendar months after the decease of such person, or two calendar months after the termination of any suit or dispute respecting the will, or the right to letters of administration, if there be any such, which shall not be ended within four calendar months after the decease, to forfeit 100*l.*, and also a further sum at the rate of 10*l. per cent.* on the amount of the stamp duty payable on the probate or letters of administration.

Affidavit of the value of the property.

Sect. 38.—No Ecclesiastical Court or person to grant probate or administration without first receiving from the person applying, or some other competent person, an affidavit or affirmation that the estate and effects of the deceased for or in respect of which the probate or administration is to be granted, exclusive of what the deceased was possessed of or entitled to as a trustee for any other person, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of his knowledge, information and belief, in order that the proper and full stamp duty may be paid on such probate or administration. Such affidavits or affirmations to be made before the surrogate or other person who administers the usual oath for the due administration of the estate.

Affidavits to be sent to the Stamp Office.

Sect. 39.—Such affidavits and affirmations to be free from stamp duty, and be transmitted to the Commissioners of Stamps together with a copy of the will, or extract, or account of the letters of administration to which it relates, by the registrar or other officer of the Court whose duty it is to transmit copies of wills and extracts or accounts of letters of administration for the better collection of legacy duties, under a penalty of 50*l.* for any neglect herein.

Where too high a duty paid on probates, &c., excess to be allowed.

Sect. 40.—Where any person on applying for probate or letters of administration shall have estimated the estate and effects of the deceased to be of greater value than the same shall afterwards have proved to be, and shall, in consequence, have paid too high a stamp duty thereon, if he produce the probate or letters of administration to the Commissioners of Stamps within six calendar months after the true value shall have been ascertained, and it shall be discovered that too high a stamp duty was first paid, and shall deliver to them a particular inventory, account and valuation of the estate and effects, verified by affidavit or affirmation, and if it thereupon satisfactorily appear to the Commissioners that a greater stamp duty was paid than the law required, the Commissioners may cancel the stamp, and substitute another for denoting the duty which ought to have been paid thereon, and make allowance for the difference, as in the case of spoiled stamps, or, if the difference be considerable, repay the same in money, at their discretion.

Where too little duty paid the full duty and penalty to be paid.

Sect. 41.—Where any person on applying for probate or letters of administration shall have estimated the estate and effects to be of less value than the same afterwards prove to be, and shall, in consequence, have paid too little stamp duty thereon, the Commissioners may, on delivery to them of an affidavit or affirmation of the value, cause the probate or letters of administration to be duly stamped, on payment of the full duty which ought to have been paid thereon, and of the further sum or penalty payable by law for stamping deeds after the execution thereof, without any deduction or allowance on account of the duty originally paid.

Within six months the difference only to be paid without penalty.

Provided. If the application be made within six calendar months after the true value shall be ascertained, and it shall be discovered that too little duty was at first paid, and if it appear by affidavit or affirmation to the satisfaction of the Commissioners that such duty was paid in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without any intention of fraud, or to delay the payment of the full and proper duty, the Com-

missioners may remit the said penalty, and cause the probate or letters of administration to be stamped on payment only of the sum wanting to make up the duty which ought to have been first paid thereon.

Sect. 42.—Provided, that in cases of letters of administration on which too little duty has been paid, the same are not to be stamped until the administrator has given such security to the Ecclesiastical Court or ordinary as ought to have been given if the full value of the estate had been ascertained. The Commissioners yearly or oftener to transmit an account of probates and administrations upon which stamps have been rectified to the Ecclesiastical Courts by which the same were granted, together with the full value of the estate.

Administrator to give further security.

Sect. 43.—Where too little stamp duty has been paid on any probate or letters of administration in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, if any executor or administrator acting under such probate or administration do not, within six calendar months after the discovery of the mistake or misapprehension, or of any estate or effects not known to have belonged to the deceased, apply to the Commissioners, and pay what is wanting to make up the duty which ought to have been paid, he shall forfeit 100*l.*, and also a further sum at the rate of 10*l. per cent.* on the amount of the sum wanting to make up the duty.

Penalty where mistake not rectified in due time.

Sect. 44.—No Ecclesiastical Court or person to call in and revoke, or to accept the surrender of any probate or letters of administration on the ground only of too high or too low a stamp duty having been paid thereon; and if any Court do so, the Commissioners not to make any allowance whatever on the probate or letters of administration so annulled.

Probate, &c., not to be revoked for wrong duty.

Sect. 45.—Reciting that in cases of letters of administration on which the proper stamp duty has not been paid, certain debts or other effects of the deceased have been found to be of such great value that the administrator has not been possessed of money sufficient of his own or of the deceased to pay the proper duty, and that persons entitled to probate or administration may find some considerable part of the estate so circumstanced as not to be immediately got possession of, and may not have money sufficient to pay the stamp duty. It is enacted that, the Commissioners, on satisfactory proof in any such case, may cause the probate or administration to be duly stamped, and give credit for the duty, either upon payment of the penalty or without, in cases of probates or administrations already obtained, and either with or without the allowance of the duty already paid, as the case may require under the provisions of this Act: provided that security be first given by the executors or administrators, with sureties to be approved of by the Commissioners, by a bond in double the amount of the duty, for the payment of the duty within six calendar months, or any less period, with interest at 10*l. per cent. per annum* from the expiration of such period until payment, in case of any default of payment at the time appointed; such probate or administration, being duly stamped, to be valid and available as if the duty had been at first paid thereon.

Credit may be given for the duty in certain cases.

Sect. 46.—If at the expiration of the time allowed, the executors or administrators have not recovered effects sufficient to pay the duty, the Commissioners may give further time, upon such terms as they think expedient.

Time for payment may be extended.

Sect. 47.—The probate or administration to be deposited with the Commissioners, and not delivered up until payment of the duty and interest; but to be produced in evidence, at the expence of the executor or administrator, if required.

Probate, &c., to be deposited.

Sect. 48.—The duty for which credit is given to be a debt to his Majesty from the personal estate of the deceased, and be paid in preference to any other debt; and if any executor or administrator pay any other debt in preference, he is not only to be charged with, and be liable to pay the said duty out of his own estate, but to forfeit 500*l.*

The duty to be a debt to the Crown.

Sect. 49.—If before payment of the duty it becomes necessary to take out

Denoting stamp

on grant *de bonis non.*

administration *de bonis non* of the deceased, the Commissioners are to cause such administration to be stamped with the denoting stamp, upon the administration being deposited with them, and upon having such further security as they may think proper; such administration to be available as if the duty had been paid.

Affidavits as to trust property made out of England.

Sect. 50.—If the person required to make any affidavit or affirmation relating to trust property, conformably to the 48 Geo. III. c. 149, reside out of England, the same may be made before any person commissioned to take affidavits by the Court of Session or Exchequer in Scotland, or a Justice of the Peace in Scotland, or a Master in Chancery, ordinary or extraordinary, in Ireland, or a Judge, or Civil Magistrate of any other place where the party resides.

Return of duty on account of debts.

Sect. 51.—A return of duty to be made in respect of debts, if claimed in three years; with power for the Treasury to allow further time in certain cases.

See 5 & 6 Vict. c. 79, s. 23, where this provision is re-enacted; giving the same power to the Commissioners of Stamps and Taxes.

56 Geo. III. c. 107.

Additional inventories where the first exhibited before 1st Sept., 1815.

Where inventories were exhibited in Scotland before the 1st of Sept., 1815, under the 48 Geo. III. c. 149, any additional inventory to be liable only to the same duty that would have been payable if exhibited before that date.

5 & 6 Vict. c. 79.

Duty may be returned on account of debts if claimed within three years.

Sect. 23.—Where it shall be proved to the satisfaction of the Commissioners of Stamps and Taxes that an executor or administrator has paid debts due and owing from the deceased, and payable by law out of his personal or moveable estate, to such an amount as being deducted from the value of the estate for or in respect of which the probate or administration shall have been granted in England after the 31st Aug. 1815, or which shall be included in any inventory duly exhibited and recorded after that day in Scotland, shall reduce the same to a sum, which, if it had been the whole gross amount of such estate would have occasioned a less stamp duty to be paid on such probate, administration, or inventory than was actually paid, the Commissioners may, and they are required to return the difference, provided the same be claimed within three years after the date of the probate or administration, or the recording of the inventory; but where, by reason of any proceeding at law or in equity, the debts shall not have been ascertained and paid, or the effects shall not have been recovered and made available, and, in consequence, the executor or administrator shall be prevented from claiming such return within three years, the Commissioners may allow such further time for making the claim as may appear to them to be reasonable.

Commissioners may grant further time.

IT is not the intention of the writer to enter on a detail of the various kinds of property in respect of which the probate is to be taxed, or to engage in speculative questions connected therewith; he will do little more than refer to the words of the statute, and set forth, under proper arrangement, the cases that have been decided upon it.

The terms in which the duties on probates, and instruments of the same nature, are imposed, are not extended in meaning, or qualified, or explained by any special enactment; regard must be had, therefore, merely to the item in the schedule to the 55 Geo. III. c. 184, (as contained in the TABLE,) in which the instrument is charged; where it will be found, that the duty is payable on the value of "the estate and effects *for or in respect of which the probate is granted*" (*a*). The point, in every instance, will be, whether or not the probate is granted for or in respect of the property relating to which the question arises.

It will be seen, in investigating the cases, that the duty does not extend to every thing that comes to the hands of the executor by the aid, or through the use made of the probate, or by means of the will. Modern decisions seem to have established as a test:—Whether the property would, in ancient times, have gone to the ordinary, to be disposed of *in pios usus*. Of such property only as the ordinary would have been entitled to, is probate granted. When this is said, every thing has been stated upon the abstract point. The cases go to illustrate the proposition.

Property not locally situate within the jurisdiction of the ordinary is not the subject of probate.

Foreign property.

The Attorney General v. *Dimond* (*b*) was the case of an information for probate duty, in which a verdict was taken for the Crown, subject to the opinion of the Court on a special case; the question being, whether a certain sum in French *rentes*, the property of the testator, was liable to probate duty. The *rentes* were sold by a French house, under a power of attorney from the executor, and the produce was transmitted to London, by bills, and

(*a*) "The estate and effects *of the deceased* for or in respect," &c. s. 38.
(*b*) 1 C. & J. 356.

invested in Consols. The Court was of opinion that the verdict should be entered for the defendant. The property in question was assets, but not being within the jurisdiction of the spiritual Judge at the death of the testator, the probate was not granted in respect of them; it was used only as evidence of the defendant being the executor.

The Attorney General v. *Hope* (c) was an appeal to the House of Lords from the Court of Exchequer, on the question of property, abroad at the time of the testator's death, being liable to probate duty. The Court below had allowed a demurrer to an equity information by the Attorney General against the executors, for an account of the foreign property, and for payment of the duty thereon; the demurrer was not argued, judgment being entered for the defendants, *pro formâ*, it being understood that the case would be carried to the House of Lords, for the purpose of reviewing the opinion of the Court in *The Attorney General* v. *Dimond*.

The testator, in this case of *The Attorney General* v. *Hope*, died domiciled in England, having property in North America, as well as in England and on the seas. In obtaining probate, duty was paid only on the property in England and on the seas. Lord *Brougham*, C., pronounced the judgment of the House against the Crown; after having made inquiry of the Judges of the Ecclesiastical Court, who corroborated his Lordship's view, that the ordinary assumed a right, in matters of probate, co-extensive, only, with his local jurisdiction. His Lordship took occasion to express his objection to overruling a decision of the Court of Exchequer in a revenue matter, except upon a clear miscarriage below.

Situs.

The peculiar nature of the property may, sometimes, give rise to a question as to its legal *situs*; and although the question is one, purely, of probate, (which may, indeed, be said to be the case in most instances, where the duty is disputed,) the point frequently arises in reference to the duty.

Notes of the East India Company payable in India.

In *Pearse* v. *Pearse* (d) the testator, (who was domiciled in England,) was possessed of personal estate, consisting of promissory notes of the Indian Government, payable in India, either in cash, or by bills on the East India Company, at the option of the holder; at his decease these securities were deposited with the Accountant General and Sub-treasurer at Madras.

Shortly before the testator's death, the Court of Directors issued a notice, giving the holders of such notes the option either of being

(c) 1 C. M. & R. 530. (d) 9 Sim. 430.

paid off, or of converting their securities into stock; with permission to proprietors in Europe to have their stock registered in England, so as to make it saleable and transferable in London, like other stock. The testator intimated to the proper officer his election to have his notes converted into stock in England; but the conversion and registry were not completed till after the will was proved. On a petition, presented in the cause, the question was, whether probate duty was payable on the notes or stock.

The Vice-Chancellor observed, that all the Court had to do, was, to consider what was the actual position of the property at the time when probate was granted; whether there was any agreement respecting it was immaterial. All that the testator had, was a right to be paid the amount of the notes, or to receive bills for it at the Treasury in Bengal; there could be no doubt of his intention to convert the notes into stock; but, when probate was granted, there was no debt due to the estate of the testator which could be sued for in England. The point appeared to be settled by *The Attorney General* v. *Hope*.

Bonds of foreign governments.

The Attorney General v. *Bouwens* (*e*) was an information for probate duty on Russian, Dutch and Danish bonds. The dividends on the Russian and Danish bonds were payable in London; those on the Dutch bonds in Amsterdam only; but the bonds were saleable and transferable by delivery merely, and it was not necessary for the holder to do any act out of the kingdom in order to render the transfer valid. The Court, on a special verdict, held that all the property was subject to probate duty.

Judgment was delivered by Lord *Abinger*, C. B., which, in reference to the general question, it is thought desirable to give at some length. After stating the facts and referring to the cases of *The Attorney General* v. *Dimond* and *The Attorney General* v. *Hope*, his Lordship proceeded:—

"The two cases above cited decided that the French *rentes* and American stock, which are part of the national debt of France and America respectively, and are transferable there only, and debts due from persons in America, were not assets locally situated here. But it is contended, and we think rightly, that the property which is the subject of this inquiry is distinguishable, and had a locality in England.

"Whatever may have been the origin of the jurisdiction of the ordinary to grant probate, it is clear that it is a limited jurisdic-

(*e*) 4 M. & W. 171.

tion, and can be exercised in respect of those effects, only, which he would have had, himself, to administer in case of intestacy, and which must, therefore, have been so situated, as that he could have disposed of them *in pios usus*. As to the locality of many descriptions of effects, household and moveable goods for instance, there could never be any dispute; but to prevent conflicting jurisdictions between different ordinaries, with respect to choses in action, and titles to property, it was established as law, that judgment debts were assets, for the purpose of jurisdiction, where the judgment is recorded; leases, where the land lies; specialty debts, where the instrument happens to be; and simple contract debts, where the debtor resides at the time of the testator's death. And it was also decided, that as bills of exchange and promissory notes do not alter the nature of the simple contract debts, but are merely evidences of title, the debts due on those instruments were assets where the debtor lived, and not where the instrument was found. In truth, with respect to simple contract debts, the only act of administration that could be performed by the ordinary, would be, to recover or receive payment of the debt, and that would be done by him within whose jurisdiction the debtor happened to be.

"These distinctions being well established, it seems to follow, that no ordinary in England could perform any act of administration within his diocese with respect to debts due from persons resident abroad, or with respect to shares or interests in foreign funds payable abroad, and incapable of being transferred here; and, therefore, no duty would be payable on the probate or letters of administration in respect of such effects. But, on the other hand, it is clear that the ordinary could administer all chattels within his jurisdiction; and if an instrument is created, of a chattel nature, capable of being transferred by acts done here, and sold for money here, there is no reason why the ordinary, or his appointee, should not administer that species of property. Such an instrument is, in effect, a saleable chattel, and follows the nature of other chattels, as to the jurisdiction to grant probate. In this case, assuming that the foreign governments are liable to be sued by the legal holder, there is no conflict of authorities; for these governments are not, locally, within the jurisdiction, nor can be sued here; and no act of administration can be performed in this country, except in the diocese where the instruments are, which may be dealt with, and the money received by their sale in this country. Let us suppose the case of a person dying abroad, all whose property in England consists of foreign bills of exchange, payable to order, which bills

of exchange are well known to be subjects of commerce, and to be usually sold on the Royal Exchange. The only act of administration which his administrator could perform *here*, would be, to sell the bills, and apply the money to the payment of his debts. In order to make title to the bills to the vendee, he must have letters of administration; in order to sue in trover for them, if they are improperly withheld from him, he must have letters of administration (for even if there were a foreign administration, it is an established rule that an administration is necessary in the country where the suit is instituted) (*f*); and that these letters of administration must be stamped with a duty according to the saleable value of the bills, the case of *Hunt* v. *Stevens* is an express authority.

"If this be the law in the supposed case, it is impossible to distinguish it from that under consideration. Here are valuable instruments in England, the subjects of ordinary sale; the debtors by virtue of such instruments, if there are any, resident abroad, out of the jurisdiction of any ordinary, and, consequently, there being no fear of conflicting rights between the jurisdictions who are to grant probate. If these were the *only* effects in England of the deceased, (a supposition which would simplify the case), there would be no question as to the necessity of probate, not only to make title to them, by sale, to any one who knew that they were the property of the deceased, or chose to inquire into the title; but, certainly, in order to sue for them against a wrong-doer; against a banker, for instance, who had received them from the deceased, and refused to deliver them to the executor or administrator; and the probate must, surely, be stamped according to the value of the only effects which could be sold, disposed of, or recovered under it. And if this be true, if they were the only effects, it must be true that the duty must be paid on their value if they form part of the effects of the deceased. We think, therefore, that in this case these instruments are in the nature of valuable chattels, saleable here, and which can be administered here, and, therefore, that their amount should be included in the value of the testator's effects. The Crown, therefore, is entitled to judgment."

Where the point, as to *situs*, arises, the question of probate duty may, or may not be involved in it. If the dispute be between two ecclesiastical jurisdictions, merely, the revenue will not be

(*f*) Story's Conflict of Laws, 421.

affected by the result, as, in any event, the duty will attach; and as the right to grant probate is not a question necessarily connected with the stamp duty, the writer will decline to entertain the subject with a view to any discussion upon it. It will be found treated on at large in works relating to executors generally, to which the reader is referred (*g*). The judgment, however, in the preceding case contains much information upon it.

Power of appointment.

It was long a disputed point whether property, the subject of a power executed by will, was liable to probate duty; it has now been, finally, settled, in the negative, by the House of Lords, in the case of *The Attorney General* v. *Drake*, (*Platt* v. *Routh*,) overruling previous decisions. The following cases will exhibit the history of the question.

A testator having, under a deed of settlement, a general power to appoint certain funds, by deed or will, did, by his will, direct that the trustees should stand possessed of the funds in trust to apply the same in payment of the legacies given by his will. On a question as to the allowance, in the executor's accounts, of the money charged for probate duty on these funds, the Vice-Chancellor was of opinion that the duty was properly paid; the testator had a general power over the funds, which he chose to exercise by a testamentary instrument, making the fund part of his general personal estate, and creating, for the purpose of giving effect to the execution of the power, an absolute necessity for a probate (*h*). His Honour did not, perhaps, sufficiently distinguish the offices of the probate, *viz.*, its immediate operation upon property, the subject of the grant by the Ecclesiastical Court; and the effect of the grant, as evidence, merely.

In a subsequent case, his Honour was, again, of opinion, that the stamp on a probate ought to be sufficient to cover property appointed by the will, under a power created by a deed (*i*).

The Attorney General v. *Staff* (*k*), was an information against the executors of *Judith Staff*, for penalties for not paying the proper probate duty, and for the duty. A verdict was taken for the Crown, subject to the opinion of the Court on a case stated.

Matthew Stainton by his will bequeathed to trustees 4000*l.* Consols, upon such trusts as *Judith Staff* should by deed or will direct or appoint. By deed she directed the trustees to transfer the stock into the names of herself and another person, upon such

(*g*) See Williams, part 1, book 1, ch 2.

(*h*) *Palmer* v. *Whitmore*, 5 Sim. 178; 2 C. & M. 131, note.

(*i*) *Nail* v. *Punter*, 5 Sim. 555.

(*k*) 2 C. & M. 124, 4 Tyr. 14.

trusts as she should, by any deed, or by her will, appoint; with limitations over, in default of appointment; and, by her will, she directed that the same should be transferred into the names of other trustees, that it might be consolidated and become part of her residuary personal estate, which she thereby disposed of.

The Court held that duty was payable on the probate of her will in respect of this property. The second power, as well as the first, was a general one, and by the execution of it the property became liable to her debts, and became her personal estate; she had an absolute control over it. She was not a mere trustee, but had a beneficial interest in the property. The case, therefore, came within the very words of the 38th sect. of the 55 Geo. III. c. 184, and, clearly, within the spirit and meaning of it.

In *Vandiest* v. *Fynmore* (*l*), the testator by his will empowered *A. H.* to dispose of a sum of 5000*l.* as she should think proper, by her will. *A. H.* accordingly made her will and appointed the fund; and the Vice-Chancellor was of opinion that no duty, in respect of the fund, was payable on her probate; the cases of *Palmer* v. *Whitmore* and *The Attorney General* v. *Staff*, did not apply, as in those cases the power was created by deed, in the present case it was given by will, and the appointees took as if named in the will.

This distinction was never considered, by the legal advisers of the Crown, as resting on any solid foundation; and it was, subsequently, repudiated, by the Court of Exchequer.

The last, and ruling case upon the subject, is that of *Platt* v. *Routh* (*m*) in the Exchequer, and at the Rolls (*n*); and the same case, *The Attorney General* v. *Drake* (*o*), on appeal to the House of Lords. A question of legacy duty, as well as of probate duty, was involved in the case; in reference to which, another appeal (*Drake* v. *The Attorney General*) arose. Both points were, on every occasion, discussed at the same time; the case will be presented here, therefore, entire.

John Ramsden, by his will, gave the residue of his property upon trust for his daughter *Judith Ann Platt*, or her assigns, for her life; and after her death, upon trust for such person or persons, (other than two persons named, and their relations, and the relations of her late husband,) in such parts and proportions, for such intents and purposes, and in such manner and form, as

(*l*) 6 Sim. 571.
(*m*) 6 M. & W. 756.
(*n*) 3 Beav. 257.
(*o*) 10 Clark & Fin. 257.

his said daughter should, by her will, direct or appoint; and, in default of appointment, to the next of kin of *D. R.* A suit was instituted by *Judith Ann Platt* for the administration of the estate, pending which she married, and died; having made her will, and appointed the property. Legacy duty, under *Ramsden's* will, was claimed to be payable as on an absolute bequest to *Judith Ann Platt*, instead of on a life interest, merely, by virtue of the 18th sect. of the 36 Geo. III. c. 52, she having exercised the power; the question on this point of the case being, whether the power was a general and absolute power; or was, by reason of the restrictions, a limited one. If the power was to be deemed general and absolute, then legacy duty would be again payable, on the same property, under the will of *Judith Ann Platt*, by virtue of sect. 7 of the same Act, which declares, that any gift by will, which shall have effect, or be satisfied out of personal estate which the person dying shall have power to dispose of, as he shall think fit, shall be deemed and taken to be a legacy, within the meaning of the Act. Assuming the power to be general and absolute, then probate duty, also, was claimed on the will of *Judith Ann Platt*, in respect of the property in question, as a part of her personal estate, for which such probate (or, rather, administration with the will or testamentary appointment annexed, she being a married woman,) was granted. These points having been submitted to the Master of the Rolls, his Lordship directed a case to be stated for the opinion of the Court of Exchequer, which was, accordingly, done, certain questions being thereby propounded.

Mr. Baron *Rolfe*, (not Lord *Abinger*, as stated in the report of the case 6 M. & W. 787,) delivered the judgment of the Court to the effect following:—The question, so far as regarded the legacy duty, appeared to depend entirely on the construction of the 18th sect. of the 36 Geo. III. c. 52. It was plain that the two classes of powers mentioned in that section were meant to include all possible cases, and the question was under which class did the present power range itself; literally, it was not within either; in applying the provisions of the Act to a case like the present some violence must, therefore, be done to the language of the clause, and, after much consideration, they thought that there was less difficulty in treating this as a general and absolute power, than as a power to appoint for the benefit of persons specially named Inasmuch, therefore, as the power was one, which Mrs. *Platt* might have exercised for her own benefit, and, as it was impossible, without manifest absurdity, to treat the persons in whose favour

she might appoint, (namely, all mankind, except three families,) as being persons specially named or described, they thought the power must be treated, according to the other alternative, as a general and absolute power, within the provision referred to. The same reasons also appeared to establish, that, according to the true construction of the 7th sect., the property subject to the power, was personal estate which Mrs. *Platt* had power to dispose of as she should think fit.

But they were of opinion that no probate duty was payable on the will of Mrs. *Platt*, in respect of such property. Their Lordships were aware that that opinion was directly opposed to the decisions in *The Attorney General* v. *Staff*, and *Palmer* v. *Whitmore*. But these cases proceeded on the ground that property subject to a general power of appointment formed part of the property "for or in respect of which the probate was granted," and it appeared to their Lordships impossible to reconcile that doctrine with the subsequent decision of the House of Lords in *The Attorney General* v. *Hope*. Although Mrs. *Platt* had what was considered an absolute power of appointment over the property, it was clear that the ordinary never could, under any circumstances, have had any right to interfere with it; and it was also certain, that, whether probate was granted or not, the executor, *quâ* executor, could have no title to any part of the property. Lord *Lyndhurst*, in delivering judgment in *The Attorney General* v. *Staff*, had said, that that case, which was exactly similar to the present, came within the very words of the 55 Geo. III. c. 184; but that was, in fact, begging the whole question. It was quite clear that neither the ordinary, nor the executor, ever could have administered any part of this property; and they could not hold that this was property for or in respect of which the probate was granted.

It would be sufficient to say, that, as it was impossible to reconcile *The Attorney General* v. *Staff* with the case in the House of Lords, they were bound to act on the latter authority; but, independently of that authority, there would be many serious difficulties resulting from the doctrine in *The Attorney General* v. *Staff*, which did not seem to have occurred to the Court when that case was decided. His Lordship then alluded to the case where the general assets, out of which the duty must come, were very small, and the appointed fund very large, the duty on which might exceed the assets; and to the case where the assets were

in one province and the appointed fund in another; and, again, where the appointed fund was in a foreign country, in which case it could hardly be contended, after *The Attorney General* v. *Hope*, that probate duty would be payable; and yet there was no more reason why it should not be than where the funds were in England; for, in neither case, would the probate give any right to the executor.

The language of the Court in *The Attorney General* v. *Staff* was, "The property, by the execution of the power, became liable to her debts, and became her personal estate; she had an absolute control over it;" if this were the correct test, it would include the case of power to appoint a sum to be raised out of real estate; and it would be a strange anomaly, that probate duty should be payable in respect of a charge on real estate, created by virtue of a power, when it was clear no such duty was payable where the charge was created by the owner of the fee simple.

According to the view of their Lordships, the Vice-Chancellor was right in *Vandiest* v. *Fynmore*, but they felt bound to add, that they did not concur in the reasons for which his Honour was represented as considering that case as distinguishable from those which had preceded it.

On these grounds, a certificate, stating the opinion of the Court to the following effect, was returned:—

1st. On the death of *Judith Ann Platt* a duty of 1*l. per cent.* became payable, in respect of the bequest in the will of *John Ramsden*, of the residue of his estate and effects to *Judith Ann Platt*, after allowing any duty already paid in respect thereof.

2ndly & 3rdly. No probate duty is payable upon the probate of the will of the said *Judith Ann Platt*, in respect of the estate and effects bequeathed and appointed by her said will as aforesaid.

4thly & 5thly. Legacy duty is payable in respect of the bequests contained in the will of the said *Judith Ann Platt*, at the same rate at which it would have been payable, if they had been mere legacies given by her, payable out of her own personal estate.

The legatee and the Attorney General, respectively, presented cross petitions to the Master of the Rolls; submitting that the opinion of the Court of Exchequer, where the same was adverse to the interest of each, was erroneous.

His Lordship concurred with that Court (*p*). He was of opinion that the power was general and absolute, and that legacy duty was payable, at 1*l. per cent.*, on the residue under *Ramsden's* will. His Lordship's opinion was not founded upon the notion that the residue had become the property of Mrs. *Platt*, but that property, circumstanced as this was, was so chargeable by the Act. He was of opinion, also, that probate duty was not payable on Mrs. *Platt's* will, in respect of this property; it would be singular that the rule of that Court, which required a probate, merely as evidence, to show that the instrument of appointment was a will, should have the effect of subjecting the property to duty, as if it had been the property of the testator.

His Lordship was, likewise, of opinion that Mrs. *Platt* had a power of disposing of the residue as she should think fit, within the meaning of the Act. He, therefore, confirmed the certificate. From this decision each party appealed to the House of Lords (*q*). The case was argued before the Judges, and the judgment of the Court below affirmed.

The distinction between the legitimate use of the probate, and that which the Court of Chancery had made of it, was, it will be noticed, particularly remarked upon, by the Master of the Rolls, in this last case.

Rules of equity not to create a charge of duty.

A mere rule, or doctrine, of a Court of equity, established, as a creature of the Court, for the purpose of an equitable disposition of property, or for executing trusts, is not to be considered as investing such property with a character which it does not, otherwise, possess; or, as subjecting it to a liability beyond the immediate object of the rule; and is not, therefore, to be the means of charging with probate duty, property, which, if unaffected by the operation of such rule or doctrine, would not be liable thereto. This is exemplified in the two following cases; in the first of which it was decided, that although the share of a deceased partner in freehold property, used, for partnership purposes, in trade, was, in equity, to be deemed, for every purpose, personal estate, it was not liable to probate duty, not being, in point of fact, personal estate: and in the second of which it was determined, that where real estate had been conveyed by a testator, by deed, in his lifetime, to trustees, for the purpose of being sold, the direction to sell being deemed, in equity, a conversion out and out,

(*p*) 3 Beav. 257.

(*q*) *Drake* v. *The Attorney General*, and *The Attorney General* v. *Drake*, 10 Clark & Fin. 257.

and the property treated as personal estate, although not converted, probate duty was not payable, such property being, in fact and in law, at the time of the testator's death, real estate still.

Partnership freehold property used in trade.

In *Custance* v. *Bradshaw* (*r*), a petition was presented for the purpose of taking the opinion of the Court on a claim made for probate duty on freehold and copyhold property of *Miles Weston*, the testator, used as partnership property in trade.

It will not be necessary to set out the facts, otherwise than as they are stated by Vice-Chancellor *Wigram*, before whom the case was very fully argued, in his judgment, the tenor of which is as follows, *viz.*:—

"From the Master's report it appears that *Miles* and *Charles Weston* before, and at the time of *Miles's* death, were seised, as tenants in common in fee, of the freehold and copyhold estates in question. Part of these estates had belonged to former firms, to the business of which *Miles* and *Charles Weston* had succeeded, and part was acquired by them during their partnership. The whole property, which consisted, principally, of public-houses, was purchased with partnership moneys, and for partnership purposes, and was so used throughout the partnership. The case for the Crown rests wholly upon the proposition, that the real estate of a partnership, purchased with partnership assets, and used for partnership purposes, is, in equity, though not in fact, personal estate; and the case of *Phillips* v. *Phillips* (*s*) was referred to, as having carried out that rule, and determined that the real estate of a partnership is, in equity, personal estate, *for all intents and purposes*. It does not appear to me that a decision in this case against the claim of the Crown will conflict with that, or any other case upon the subject; and, consequently, in deciding against the claim of the Crown in this case, I am not called upon to express any opinion upon the judgment in *Phillips* v. *Phillips*.

"All that is necessarily involved in the cases referred to, including *Phillips* v. *Phillips*, is, that those in whom property, directed to be converted, may be vested, are trustees for the persons to whom the personal estate of the owner may belong.

"The rule of equity, relied on by the Crown, is fully satisfied by that interpretation of the rule, and the rule, so interpreted, decides nothing in the present case.

(*r*) 9 Jurist, 486; 14 L. J. R. (N. S.) Chan. 358; 4 Hare, 315.
(*s*) 1 M. & K. 649.

"Again: the circumstance that the proceeds of the property directed to be converted can be recovered only by the personal representative, and that it cannot be recovered before, nor without probate, is equally inconclusive. The land, by the act of the owner, is to go and be distributed as his personal estate; and the probate is evidence, and the only conclusive evidence of the right of the executor to receive the proceeds for the purpose of distribution. For this reason, without more, the probate would be necessary. The case of personal estate locally situated abroad at the time of the testator's death, and the case of real estate devised to executors in trust to receive and pay debts, are cases within the terms of the argument I am now considering; but in neither of those cases is the duty payable.

"The language of the Stamp Act which imposes the duty, is, also, inconclusive. The duty is thereby imposed upon *the estate and effects for or in respect of which the probate shall be granted,* leaving open the question to be now decided, whether the property in question is property, for or in respect of which probate should be obtained, within the meaning of the Act.

"The answer, then, to the question at issue cannot, I think, be found in the preceding considerations, and must be sought for in the result of an inquiry into the nature of the property, for, or in respect of which, probate is strictly necessary. Is property directed to be converted into money of the nature of that, which, but for the will, the ordinary, in early times, would have been entitled to take or apply to pious uses? I refer to the *King* v. *Dimond, The Attorney General* v. *Hope,* and to Lord *Abinger's* observations in *Platt* v. *Routh.* This question, in my opinion, must be answered in the negative. The whole line of cases respecting *bona notabilia* appears to me to show this, without leaving room for controversy, unless it can be successfully contended, that the interest which a person has in the proceeds of lands of inheritance, directed to be sold, is *bonum immobile* within the statute of 21st of Henry VIII. c. 5, and this, I think, cannot be successfully contended for. Suppose a man should convey freeholds of inheritance to trustees, on an absolute trust to sell and pay creditors, and hand over the surplus to himself; his interest in that surplus would, I apprehend, during his life, until the moment of his death, be of a real, and not of a chattel nature; he could not, by so dealing with a freehold interest of his own, have acquired, before the late Will Act, the power to dispose of his interest in the land otherwise than by a will

attested by three witnesses. Those who claim under him may be bound to take the property with any character he may have impressed on it, but that will not, at all, alter the nature of his interest in it at the moment of his death.

"Again: admitting that if the estate, directed to be converted, were unsold at the death of the testator, the surplus proceeds of the estate would belong to the same persons to whom the personal estate of the testator would go, might they not pay off the debts, and elect to take the land discharged of the trust to sell? If they should so act, and elect, could the Crown insist on the land being sold, in respect of any interest it had in ascertaining the actual amount of probate duty payable in respect of the land directed to be converted? To that length the argument of the Crown must go; and if it cannot be sustained to that length, then, in my opinion, the decision must be against the claim of the Crown in the present case.

"In the simple case I have put, of land directed to be converted into money, I think the answer to the claim of the Crown would be, that the property in question was, in fact, real estate at the death of the testator, and, as such, not liable to probate duty, and that equity would not alter the actual nature of the property for the purpose only of subjecting it to fiscal claims, to which, at law, it was not liable in its existing state, and, certainly, not intended to be made liable by the Stamp Act. The right to discharge the property from the trust to sell, both on the part of the testator and those who claim under him, is part of the original equity which, in the first instance, treats real estate, directed to be converted, as personal estate.

"Now on that part of the case I certainly give my opinion with great confidence, because I find that Lord *Langdale* has come to, precisely, the same conclusion; he had done so before I had any communication with him upon the subject.

"But, then, the question arises, whether the circumstance of this being partnership property makes any difference. The argument which certainly, at the moment, had some effect on my mind, was, that the interest of the deceased partner in the estate was an interest only in the balance to be recovered in respect of the partnership accounts; but that, in my opinion, makes no difference. This is true as between the parties themselves, but does not alter the real nature of the property. The state of the accounts renders a sale of the property wholly unnecessary, as, also, might the acts of

the parties, between themselves; and I think, therefore, no difference is made in respect of that view of the case."

Real estate conveyed to trustees to be converted.

In *Matson* v. *Swift* (*t*) a claim for probate duty on the will of *John Swift*, in respect of the produce of certain real estates, having been made by the Commissioners of Stamps and Taxes, a petition was presented to the Master of the Rolls, with the concurrence of the Board, for the purpose of taking his Lordship's opinion upon the point.

The facts of the case are stated in the judgment, which, from the importance of the subject, and that to be attached to his Lordship's reasoning, it has been considered desirable to give at length, as in the previous case. The judgment is as follows, *viz.* :—

"In this case *John Swift* being indebted on mortgages, bonds, and otherwise, to several persons, executed an indenture dated the 14th Nov., 1836, and thereby conveyed the estates subject to mortgages, together with some other estates, to *William James* and *Robert Hinde* in fee, in trust, when they in their discretion should think proper, without the consent, or otherwise, of *Swift*, by mortgage, sale, lease, or other disposition of the estates, to raise such money as they should think necessary, and stand possessed thereof in trust, thereout, to pay certain costs, and then the mortgage, bond, and other debts therein mentioned; and after, and subject to the answering of such trusts, in trust to pay the surplus, if any, to *Swift*, his executors, administrators, and assigns, and *that without any claim or equity therein by or in favour of the heirs, or real representatives of Swift, notwithstanding that the trust estate, or any part thereof, should or might remain unconverted at the time of his death.*

"On the 24th of January, 1837, *Swift* died, before any part of the estate was sold. He left a will in which he appointed his wife executrix, and she, alone, proved the will.

"In September, 1839, the trustees sold part of the estates, and soon afterwards contracted to sell the remainder. Their contract for that purpose has since been carried into execution under the direction of this Court. After deducting from the purchase money the costs of executing the trusts, and the amount of the debts which were to be paid, there remained a surplus of 10,832*l.* 1*s* 3*d.*: in respect of which the Commissioners of Stamps claim to be entitled to payment of duty.

(*t*) 14 L. J. R. (N. S) Chan. 354; 8 Beav. 368.

"For the Crown it was argued, that by the operation of the deed of November, 1836, and according to the established doctrine of Courts of equity, the real estates of *John Swift*, which were conveyed by the deed, were converted, out and out, into personal estate, and ought to be treated, for all purposes, as personal estate. If, it was said, you give to real estate the attributes of personalty for some purposes, there can be no sufficient reason for not making it subject to all the incidents of personal estate; and, among other incidents, to the liability to probate duty.

"It is true that a conveyance by the owner of a real estate on trust to sell it for a particular purpose, as for the payment of debts, with a direction to pay any surplus of the purchase money to the owner, his executors, administrators and assigns, may have, and often has, the effect of inducing this Court to apply to the property, in whatever state it may be found, the rules of distribution which are commonly applicable to personal estate only. In the cases where this is done the owner is, in figurative, or metaphorical language, said to have impressed upon his real estate the character of personalty, or to have converted, out and out, the realty into personalty.

"This language is used, and the Court has occasion to apply the rules of distribution in the manner I have noticed, only in cases where there has been no actual conversion by the owner; and it is important to observe, that such application of those rules of distribution is, and can be effected only by executing the trusts, expressed or implied, which the Court enforces against all persons having any legal estate interfering with the apparent intention of the owner of the property, or opposed to the rights which he meant to confer. What is meant is, that, for purposes plainly contemplated by the owner, or for purposes necessary to the accomplishment of his apparent intention, and to give effect to the rights which he, expressly, or by implication, meant to confer, the Court will declare, or, at least, impute trusts; and, under the execution of such trusts, will distribute the property as if it were personalty. After such a conveyance, even if we assume that obligatory claims to a portion of the intended purchase money had been created, the equity of the land remains with the owner, and, after satisfying the pecuniary claims which he has rendered obligatory, either by other means, or out of the land itself, he may require the trustees to convey to him either the whole estate, or any surplus of it; and, even without conveyance, he may, by declarations which have been called slight, take from the property the personal character which

he was considered to have impressed upon it, and establish his right to it in its actually existing character of land or real estate. If he does not at all intervene, and no sale is made in his lifetime, then, at the time of his death, this Court has jurisdiction to give effect to his apparent intention, and will, for that purpose, consider the person in whom the legal estate is vested, whether he be a trustee created by deed, or an heir entitled by descent, as a trustee for that purpose, but not for any other purpose; so that if there be not by deed, by devise, or otherwise, an apparent intent to take the surplus from the heir, the heir will, in equity, be held entitled to the surplus, though it may have been actually converted into money by the trustees in making sales pursuant to the trusts, and for the purpose of answering the intention really appearing.

"The cases in which the actual conversion into money under a deed does not deprive the heir of his title by descent, show a great difference between an actual conversion, and that which has been in equity called a conversion out and out. That expression is strictly applicable to conversion which the Court has the jurisdiction to make, and will make, by enforcing equities, and executing trusts, which it declares, or imputes for the purpose of carrying into effect intentions, expressed, or implied, of the owner of the land. In the cases supposed, the real estate is not, in fact, converted, or in any way altered at the time of the owner's death; and equity considers not what might have been done with it, but what ought to be done, and will declare or act upon the trusts, which are required for the purpose of making the actual conversion, at the instance, only, of those who show themselves entitled to the benefits of such trusts. And we may reasonably ask the question, whether, after conveyances of the land in trust to sell, or after a valid contract for the sale of the land, and the death of the owner, the Crown can be entitled, for its own purposes only, to enforce the equities between parties. If the parties should release each other, could the Crown, for purposes merely fiscal, not in the contemplation of any party, and not required to fulfil the intention of any party, be entitled to the benefit of trusts which are declared, or acted upon, only for the purpose of giving effect to the intentions of the parties? Supposing the conversion not to have been actually made in the lifetime of the owner, and not to be required for the purposes of the deed; and supposing, further, that any equities that may have existed among the persons interested in the estate are waived, or satisfied, I am of opinion that

the Crown could not be entitled to enforce those equities for its own purpose.

"In the present case an actual conversion was required, and has, accordingly, been made since the testator's death, and the produce of the sale has been, by this Court, treated as the personal estate of the deceased; but I am of opinion that the Crown is not entitled to any benefit from that conversion so made, and that the interest of the deceased in the property was not subject to probate duty, because, in fact, the interest of the deceased existed in the form of an equitable interest in land of inheritance, and not in the form of personal estate, in which form, alone, the administration of it could be granted by probate.

"Probate, so far as relates to the grant of administration, has regard only to personal estate within the jurisdiction, which the deceased had whilst living, and at the time of his death; and probate duty is payable only in respect of the personal estate as to which the probate was granted; that is, personal estate within the jurisdiction, which the deceased had whilst living, and at the time of his death. Goods, chattels and credits constitute a personal estate in respect of which probate is granted. An equitable interest in land of inheritance, or equities founded solely on the right to such land, and attached to the ownership of land, do not constitute personal estate, although the owner may have so dealt with the land that he can receive the benefit of it only in the shape of money, by means of the conversion to be made under the authority of this Court, in execution of the trust which he has created; and I am of opinion that the ordinary has no jurisdiction over such property, and that the person to whom administration is granted, has not, by virtue only of such grant of administration contained in the probate, any right to administration of such property.

"In cases of this sort, ambiguity may have arisen from the figurative, or metaphorical language in which the equitable doctrine is expressed, and, also, from the two-fold office or character of probate; which, besides granting administration, authenticates the will, and is evidence of the character of the executor. Probate, as evidence of the will and of the character of the executor, may, in many cases, be required for the purpose of proving the executor's title to personal estate, which may not be comprised in the grant of administration contained in the same probate; and I am of opinion that the money to arise, and which, in this case, did, afterwards, arise, from the sale of the estate as comprised in the deed

of November, 1836, was not personal estate in respect of which probate was granted; and, therefore, probate duty is not payable upon it."

Probate not evidence unless stamped for the amount sought to be recovered.

A plaintiff seeking to establish a demand, in his representative character, must take care that his evidence of title is not defective, by reason of the insufficiency of the stamp on his probate, or letters of administration; the stamp must cover the amount of the claim.

In *Hunt* v. *Stevens* (*x*) the plaintiff declared in trover, as administrator, for goods to the amount of 1300*l.*, but he had taken out letters of administration for property of the value of 1000*l.* only; it was held that the letters of administration could not be given in evidence, and, as they formed the foundation of the plaintiff's title, he could not recover.

If the title of the executor be admitted on the record, the probate need not be produced.

But where, by the form of the pleadings, the plaintiff's title is admitted, and it is not necessary to produce the probate or letters of administration, the amount of the stamp duty thereon cannot become a question. *Thynne* v. *Protheroe* (*y*) was an action of assumpsit, on a special agreement with the plaintiff's intestate, for the recovery of 2100*l.*; the defendant pleaded the general issue. On the trial, the plaintiff, having received notice for that purpose, produced the letters of administration, which were stamped for a value not exceeding 100*l.*, and he was nonsuited. On motion, the Court held that the plaintiff had no occasion to produce the letters of administration at all; the plea admitted that he was administrator; and if he could be obliged to show his title, it would be the means of getting the benefit of *ne unques administrator* upon the general issue.

Probate when stamped good by retrospection.

At whatever period a probate or administration is stamped, it is good from the beginning, as in the case of instruments in general. In *Rogers* v. *James* (*z*), which was an action by the assignees of a bankrupt, it was objected that the commission could not be sustained because the probate of the petitioning creditor, who issued the commission as an executor, was not, at first, properly stamped; but *Gibbs*, L. C. J, said that it had never been contended that, after a valid stamp had been put upon an instrument, the party claiming under it had not a good right of action by retrospection. And see *Smith* v. *Creagh* (*a*), in the Court of King's Bench in Ireland. In this case it was held, also, that the provision for increas-

(*x*) 3 Taunt. 113.
(*y*) 2 M. & S. 553.
(*z*) 2 Marsh. 425
(*a*) Batty, 384.

required the whole value of the estate and effects to be sworn to, including the debts due to the deceased, though not recovered, and without deducting anything on account of debts due from him. The point was not much considered in *Foster* v. *Blakelock*.

Mann v. *Lang* (*l*) was an action against executors, in which the defendants pleaded *plene administravit*, and the probate was admitted to show the amount of assets. On a rule for a new trial the Judges all considered that it was admissible evidence, subject to the observations of the Judge thereon, which might, or might not be objectionable as to the extent of such evidence. Lord *Denman* agreed with Lord *Tenterden*, in *Curtis* v. *Hunt*, that in that case, after twenty-eight years' acquiescence in the payment of the duty, the stamp was *primâ facie* evidence of the amount of assets. Mr. Justice *Littledale*, in alluding to that case, merely remarked, that many years had expired since that probate; but he expressed his opinion, in general terms, that the stamp was not *primâ facie* evidence of the amount of the assets, although he would not say that it was not evidence. Mr. Justice *Patteson* differed from Lord *Tenterden*; he did not think that the stamp was *primâ facie* evidence of assets come to the hand of the executor, even where a long time had elapsed; he might expect, but never realize them; but he could not say that it was not admissible; he thought *Curtis* v. *Hunt* and *Foster* v. *Blakelock* bad law upon this point, and agreed with what was said in *Stearn* v. *Mills*.

That the view taken by Mr. Justice *Patteson* was perfectly correct does not admit of a doubt. It is too much to say that a case might not arise where proof of what the executor estimated the assets at was not material; to the extent of showing this the stamp on the probate will go; but it is quite impossible that it can be, even, *primâ facie*, evidence of assets received; and to say that it can become so after any lapse of time is, altogether, erroneous; an omission, for the period of six months, to rectify an improper amount of stamp duty, is, in effect, the same as an acquiescence therein for twenty-eight, or any given number of years; because, six months after the error has been discovered, is the limit within which the stamp, if too large, can be rectified. But supposing the stamp to be conclusive, not, merely, *primâ facie*, evidence of what it indicates, or is intended to indicate, it would amount only to proof, that the effects of the deceased were, at the time it was obtained, of a certain value; which fact, if proved by any other

(*l*) 3 Ad. & E. 699; 5 Nev. & M. 202.

means, would not be sufficient to charge the executor with assets. The property might, as Mr. Justice *Patteson* observed, be in existence somewhere or another, if the executor could get it: he might expect to obtain it; but he could take no means to do so without a probate stamped for the amount sought to be obtained. In *Foster* v. *Blakelock* the Lord Chief Justice said the stamp was presumptive evidence, which might have been rebutted; thus throwing upon the executor the difficult, if not impossible task, of proving a negative; of showing either that no such property, as he had fancied, was ever in existence; or, that if it ever had existence, it had not come to his hands. But it is presumed that after *Mann* v. *Lang*, although a Judge will hardly reject the evidence, altogether, he will render it wholly unavailing for any purpose.

Bad debts excluded.

In estimating the amount of the effects of the deceased, for the purpose of probate, desperate and doubtful debts due to the estate may be excluded. In *Moses* v. *Crafter* (*m*) a probate was produced stamped for property under the value of 200*l.*, but it would have exceeded 2000*l.* if a debt due from certain persons, who were bankrupt, and another debt, received by instalments, had been included. Lord *Tenterden* thought that desperate and doubtful debts need not be included, and that the executor had a right to exercise his judgment, fairly and *bonâ fide*, whether a debt was doubtful or bad.

Affidavit of the value of the property to be made on obtaining probate.

By the 55 Geo. III. c. 184, s. 38, an affidavit is required to be made of the value of the estate and effects before probate or administration is granted, and upon such value the duty is to be paid. In estimating the amount everything must be included to which the grant is to extend, except trust property; and no deduction is to be made for debts due from the deceased; the Commissioners being authorized to return the duty where debts are paid, as well as where the property has been over estimated, provision is, also, made for increasing the duty where too little has been paid.

A return of duty on the ground of debts.

Authority for returning duty on the ground of debts was contained in the 55 Geo. III., if claimed within three years, power being given to the Treasury to extend the period in certain cases; but this provision is superseded by a similar one in the 5 & 6 Vict. c. 79 (*n*), the Commissioners of Stamps and Taxes being invested with the same power to grant time for making the claim as the Treasury.

On the ground of mistake.

Where the property has been over estimated, and too high a

(*m*) 4 C. & P. 524. (*n*) Page 598, *ante*.

duty has, in consequence, been paid, the Commissioners are by section 40 of the 55 Geo. III. (*o*) authorized, on application made within six calendar months after the true value of the effects has been ascertained, to return the overplus, and to correct the stamp.

Where too little duty paid.

And where the effects have been estimated at less value than they afterwards prove to be, and too little stamp duty has been paid, the Commissioners may, under section 41 of the Act (*p*), affix the proper stamp on payment of the entire duty (without any allowance for that already paid) and the usual penalty (5*l.*) payable on stamping a deed, an affidavit being made of the true value. But if the application be made within six calendar months after the discovery of the mistake, it appearing by affidavit that no fraud or delay was intended, the Commissioners may remit the penalty, and stamp the instrument on payment of the difference of duty only. If application be not made to rectify the mistake within the six months, not only is the before mentioned penalty payable on stamping the instrument, but the executor, or administrator is (under sect. 43) personally liable also to a penalty of 100*l.*, and a further sum of 10*l. per cent.* on the deficiency of duty. And in the case of letters of administration, further security to the Ecclesiastical Court must be given before they can be stamped.

Return of duty on the ground of debts where probates by several courts.

In any application to the Commissioners for a return of probate duty on account of debts paid, where several probates have been granted, by different Ecclesiastical authorities, the debts must be apportioned, rateably, in reference to the amount of property in each jurisdiction. This was determined by the Court of Queen's Bench, on a mandamus against the Commissioners at the instance of the executors of the late Lord *Wallace* (*q*), the facts of which case were as follows, *viz.*:

The will of Lord *Wallace* was proved both in Canterbury and York, the effects in the former province being sworn under 45,000*l.*, upon which a duty of 600*l.* was paid; and in the latter under 8000*l.*, and 140*l.* paid, the total duty being 740*l.* The property eventually proved to be, in Canterbury 43,377*l.* 3*s.* 6*d.*, and in York 7569*l.* 18*s.* 2*d.*, making a total of 50,947*l.* 1*s.* 8*d.* The debts paid amounted to 2689*l.* 6*s.* 10*d.*, which, deducted from such net total, would leave 48,257*l.* 14*s.* 10*d.*, upon which, if one probate only had been necessary, the duty would have been

(*o*) Page 596, *ante*.

(*p*) Page 596, *ante*.

(*q*) *The Queen* v. *The Commissioners of Stamps and Taxes*, (*re Lord Wallace, deceased*,) 16 L. J. R. (N. S.) Q. B. 75; 11 Jur. 365; 9 A. & E. (N. S.) 637.

675*l.*; the executors, therefore, sought to have 65*l.* returned. The Commissioners, in conformity with their uniform rule in such cases, proposed to apportion the debts between the two provinces, according to the assets in each; the result of which, would, however, have given the executors no return in either, as the deduction would not have reduced the sum below the next step in the scale; and the question was, which mode was the proper one under the Act of Parliament, (5 & 6 Vict. c. 79, s. 13,) the Commissioners being desirous of taking the opinion of the Court as to the propriety of that which they had hitherto pursued in such cases. All the facts were set out by the Commissioners in a plea to the writ, and the point came on for argument on demurrer. The Court was, decidedly, of opinion, that there was no authority for requiring the Commissioners to do as the writ commanded; the duty to be returned must be calculated in reference to that which was paid on each probate, and the Court knew no other way of complying with the Act, than by adopting the mode proposed by the Commissioners, which appeared to be fair and reasonable. Judgment, therefore, was given for the Commissioners.

Where property situate abroad.

But, according to a subsequent decision of the same Court, property out of the United Kingdom need not be referred to, on an application of a similar nature (*r*).

These two cases can, perhaps, scarcely, be reconciled in principle; but, although the judgment in the latter is considered, by no means, satisfactory, yet, as the Commissioners concurred in the mode of proceeding, with the view to obtaining a judicial opinion, the Attorney General waiving the objection to the jurisdiction, and as the circumstance of the abolition of the Board of Stamps and Taxes interposed, in a measure, a practical difficulty in carrying the case to a Court of Appeal, the Commissioners of Inland Revenue were advised to acquiesce, in reference to the particular instance, in the opinion given, and return the duty. It should be observed, however, that Lord *Denman* who delivered, (and, as his Lordship, on a subsequent occasion, stated, prepared,) the judgment, desired that, in future, no cases of this description should be brought before their Lordships, but be referred to the Court of Exchequer, the proper jurisdiction for determining questions relating to the revenue.

(*r*) *The Queen* v. *The Commissioners of Stamps and Taxes, (re Ostell, deceased,)* 18 L. J. R (N. S.) Q. B. 201; 13 Jur. 624.

Time of value for probate.

The value of the property, with reference to the probate duty, must be that at the time of the grant, and not of the death of the testator (s).

ABSTRACT OF THE REGULATIONS for altering the Duties on Probates and Letters of Administration on which too much or too little Duty has been paid, in consequence of a mistake in the estimate of the value of the effects, under the 55 Geo. III. c. 184, ss. 40 and 41.

An affidavit in the form subjoined must be made by the executors or administrators, and delivered with the probate or letters of administration, at the Legacy Duty Department, *within six calendar months after the true value of the effects shall have been ascertained, and it shall be discovered that too much or too little duty has been paid.*

In the case of a return of duty, there must be subjoined to the affidavit a correct inventory and account of the effects of the deceased; and all appraisements must be duly stamped

In cases of letters of administration on which too little duty has been paid, a certificate from the proper officer of the Ecclesiastical Court, that further security has been given, must first be obtained

If the affidavit be found sufficient, the proper officer will procure a Commissioner's fiat for altering the stamp; and the necessary warrant, containing directions for further proceedings, will be delivered, together with the probate or letters of administration, to the person making the application.

No fees or gratuities whatever are to be taken by any officer or clerk at the Inland Revenue Office, for any thing done by him in pursuance of these regulations.

See further regulations, page 626, *post*.

FORM OF AFFIDAVIT.

Reg	No.	18	Folio.

In case of letters of administration the form to be adapted accordingly All the executors

In the executorship of ——— deceased

A B, of, &c, maketh oath and saith, that probate of the last will and testament of E. F., late of, &c., deceased, who died on the ———, was granted to this deponent by the [*state the Court correctly*] on ———, and that the estate and effects of the said deceased, for or in respect of which the said probate was granted, were then sworn to be under the value of ———, and a stamp duty of ——— was accordingly paid on the said probate. And

(s) *Doe dem. Richards* v. *Evans*, 11 Jur. 609, 16 L J. R (N. S.) Q B. 305.

this deponent further saith, that since obtaining the said probate, and *within six calendar months now last past*, the true value of the estate and effects hath been ascertained, and it hath been discovered that too high [*or too little*] a stamp duty was paid thereon; for that

administrators must join in the affidavit.

[*Here state the facts to show how it happened that too much* [*or too little*] *duty was paid, and at what particular time, and through what circumstances the true value was discovered.*]

Continuation of affidavit where *too much* duty has been paid.

And this deponent further saith, that the schedule hereunto subjoined and subscribed by him doth contain a true and perfect inventory, account, and valuation of the personal estate and effects whereof the said deceased was possessed, and for which the said probate was granted by the Court aforesaid, exclusive of what the deceased may have been possessed of, or entitled to, as a trustee for any other person or persons, and not beneficially, and without deducting any thing on account of the debts due and owing from the deceased; and particularly that the said inventory includes all the leasehold estates for terms of years, absolute or determinable on a life or lives, whereof the said deceased was possessed; and that such personal estate and effects did not at the time of the granting of the said probate amount in value to more than the sum of ———, which is set forth in the said schedule as the amount or value thereof, to the best of the knowledge, information, and belief of this deponent. And therefore this deponent saith, that he hath been informed and believes that a stamp duty of ———, and no more, ought to have been paid on the said probate. All which is submitted to the Commissioners of Inland Revenue, praying that the sum of ———, being the amount of duty overpaid, may be returned to this deponent [*or* to G. H., the agent of this deponent, whose receipt shall be a sufficient discharge for the same]; and that the stamp or stamps on the said probate may be rectified as the law directs.

Sworn, &c.

Continuation of affidavit where *too little* duty has been paid.

And this deponent further saith, that the personal estate and effects whereof the said deceased was possessed, and for which the said probate was granted by the Court aforesaid, (exclusive of what the deceased was possessed of, or entitled to, as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased whether absolute or determinable on a life or lives, and without deducting any thing on account of the debts due and owing from the deceased,) though exceeding the value of ———, are under the value of ———, according to the best of the knowledge, information, and belief of this deponent, and that too little duty was paid at first on the said probate entirely through ignorance, mistake, or misapprehension, and without any intention of fraud, or to delay the payment of the full and proper duty, which this deponent hath been informed and believes amounts to the sum of ———. All which is submitted to the Commissioners of Inland Revenue, praying that the said probate may now be duly stamped, on payment of the sum of ———, being the sum wanting to make up the duty, which ought to have been at first paid thereon.

Jurat where sworn at the Legacy Duty Office.

Sworn [*or* severally sworn by the said ——— and ———] at the Legacy Duty Office, Somerset House, in the county of Middlesex, this ——— day of ——— 18—, before me,

ABSTRACT OF THE REGULATIONS to be observed for obtaining a return of duty on the ground of debts, pursuant to the 55 Geo. III. c. 184, s. 51; and 5 & 6 Vict. c. 79, s. 23.

An Affidavit in the form subjoined, written on foolscap paper, with a quarter margin, must be made by the executor or administrator, and delivered, with the probate or letters of administration, at the Legacy Duty Office, *within three years after the date of the probate, or letters of administration.* But if a return of duty cannot be claimed within that period, in consequence of the debts not having been ascertained and paid, or the effects not having been recovered and made available, by reason of any proceedings at law or in equity, an application must be made to the Commissioners of Inland Revenue for further time.

Evidence must be given of the validity of the debts, and of their being payable by law out of the deceased's personal estate; and vouchers (on the proper stamps) of the payment thereof must be exhibited. The proper vouchers in respect of debts on mortgage, bond, covenant, bill, or other security, are such instruments respectively, with the discharge, release, or other acknowledgment of the payment.

If, when the actual value of the effects is ascertained, it shall appear that either too much or too little duty has been paid, in consequence of an erroneous estimate, application must be made in the Probate Duty Office, in order to obtain a return of the duty overpaid, or to pay the additional duty, *before* the return of duty on the ground of debts can be granted.

A return of duty cannot be granted on account of debts, until all the debts shall be paid in respect of which any claim is intended to be made; nor until the effects of the deceased shall be fully got in and converted, or the amount and value thereof otherwise CLEARLY ascertained. The return is restricted to the debts actually owing by the deceased at the time of his death; and no return can be granted in respect of debts, the payment of which is exclusively charged upon real estate, or in case of a probate or administration prior to the 31st of August, 1815. When the effects are situate in different jurisdictions, British or Foreign, the dates of the grant of each probate, &c., if more than one, should be set forth in the affidavit, with *separate* schedules of the effects in each jurisdiction, and *one* schedule of the debts, which will be apportioned rateably upon the effects comprised in the several schedules, and the return of duty will be allowed according to the reduced value in each jurisdiction, after making such apportionment.

FURTHER REGULATIONS applicable to all the foregoing cases.

The business must be transacted by personal attendance at the Legacy Duty Office of the party or his agent, and not by means of correspondence.

The affidavit must be made before a Master in Chancery, ordinary, or extraordinary, or at the Legacy Duty Office. If the former, it must be written on a 2*s.* 6*d.* stamp; if the latter, no stamp is necessary, but it must be brought ready written.

FORM OF AFFIDAVIT.

Register.	No.	18	Folio.

In the executorship of ——— deceased.

In case of administration the form to be adapted accordingly.

A. B., of, &c., maketh oath and saith, that probate of the last will and testament of E. F., late of, &c., deceased, who died on the ——— was granted to this deponent by the [*state the Court correctly*], on the ———; and that the estate and effects of the said deceased, for or in respect of which the said probate was granted, were then sworn to be under the value of ———, and a stamp duty of ——— was accordingly paid on the said probate (A). And this deponent further saith, that the schedule hereunto annexed and subscribed by him, and marked No. 1, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects, whereof the said deceased was possessed, and for which the said probate was granted by the Court aforesaid, exclusive of what the deceased may have been possessed of, or entitled to as a trustee for any other person or persons, and not beneficially, and particularly that the said inventory includes all the (B) leasehold estates for terms of years, absolute, or determinable on a life or lives, whereof the said deceased died possessed, and that such personal estate and effects being now fully got in, or the amount thereof clearly ascertained, did not at the time the said probate was granted exceed the sum of [*State the amount without any deduction on account of the debts*] according to the best of the knowledge, information and belief of this deponent. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's knowledge and belief (C). And this deponent further saith that he hath actually paid debts to the full amount of ———, without reckoning or including any interest accrued or become due upon any debt since the death of the said deceased (D); and that the said debts are not in any way made chargeable upon or payable out of any real estate distinct from or in exoneration of the personal estate for and in respect of which the said probate was granted, but that the same were justly due and owing from the deceased at the time of his decease, and payable by law out of his personal estate; and that the said debts being deducted from the amount or value of the said personal estate and effects, do reduce the same to a sum, which, if it had been the whole gross amount or value of the personal estate and effects of the deceased, would have occasioned a less stamp duty to be paid on the said (E) probate than was actually paid thereon, by the sum of ———, as this deponent hath been informed and believes. All which is submitted to the Commissioners of Inland Revenue, praying that the said sum of ——— may therefore be returned to this deponent, pursuant to the Act of Parliament in that behalf, and that the same may be paid to ———, of ———, the agent for this deponent, whose receipt shall be a sufficient discharge for the same.

See form of jurat, *ante*.

(A) If a further duty has been paid by reason of too little duty having been paid by mistake in the first instance, insert the following clause:—

And this deponent further saith, that since obtaining the said probate it hath been discovered that the value of the estate and effects of the said deceased exceeds the sum of ———, and the same have been sworn to be under the value of ———, that the additional duty of ——— hath been paid on the said probate, which being added to the duty of ———, paid at the time of obtaining the said probate, makes the whole duty paid ———.

Or, if a proportion of the duty has been returned, by reason of too much having been paid by mistake in the first instance, then insert the following clause:—

And this deponent further saith, that since obtaining the said probate, it having been discovered that the value of the estate and effects of the said deceased is under the sum of ———, the same hath been sworn to be under that sum, and a return of duty hath been granted on the said probate, whereby the duty paid in the first instance by this deponent is reduced to the sum of ———.

(B) If no leasehold, omit the clause and insert—

And that the said deceased was not possessed of any leasehold estate for terms of years, absolute or determinable, on a life or lives.

(C) *If the deceased did die possessed of any other property in Great Britain or elsewhere, omit the preceding clause, and insert the following :—*

And that the said deceased, at the time of his death, was possessed of personal estate and effects, situate out of the jurisdiction of the aforesaid Court, and not included in the aforesaid sum of ———, the value and particulars of which last mentioned estate and effects, is and are set forth in the schedule hereunto annexed, and subscribed by this deponent, and marked No. 2. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's knowledge, information, and belief.

(D) If the executor has retained any debt due to himself, then vary the form thus :—

And this deponent further saith, that he is entitled to retain, and hath retained, the sum of ———, being a debt due and owing to him from the deceased at the time of his death; and that he hath actually paid debts to the full amount of ———, making together the sum of ———, without reckoning or including any interest accrued, or become due upon any debt, since the death of the said deceased.

(E) If a further duty has been paid, or a proportion of the duty returned, in either case insert here the word "rectified."

SCHEDULE No. 1.

Solvent Estate.

Inventory of deceased's effects. According to the value thereof at the time the probate was granted.

			£	s.	d.
Cash at the banker's			875	13	0
Household goods and furniture,	as per valuation	If sold, state the gross amount of the sale.	657	10	0
Plate, linen, and china	ditto		212	5	6
Wearing apparel and trinkets	ditto		58	7	0
Books and pictures	ditto		205	9	0
Wine and other liquors	ditto		300	0	0
Stock in trade	ditto		2,794	15	0
Leasehold estates	ditto		4,321	8	0
Book debts			3,154	12	6
£1500 New 3½ per Cents.		at 105	1,575	0	0
£9000 3 per Cent. Consols		at 80	4,800	0	0
[Carried forward]			£18,955	0	0

Schedule of debts due and owing from the deceased at the time of his death, and *actually* paid

		£ s. d.	£ s. d.
			18,955 0 0
No		£ s. d.	
1	Robert Jennings, wine merchant, for wine	170 0 0	
2	John Radcliffe, upholsterer, for furniture	235 19 0	
	&c. &c. &c.		4,048 12 3
	Balance		£14,906 7 9

NOTE —The probate duty on this balance, the same being above 14,000*l.*, and under 16,000*l*, is 250*l.*, which being deducted from 310*l.*, (the duty paid on the gross value,) leaves 60*l.* to be returned.

(Signed) A. B., Executor.

Insolvent Estate.

Inventory of the deceased's effects. According to the value thereof at the time the probate was granted.

	£ s. d.
Cash at the banker's	175 13 0
&c. &c. &c. [as before]	
	£18,955 0 0

Schedule of the debts due and owing from the deceased at the time of his death, and *actually* paid.

		£ s. d.	
No			
1.	Robert Jennings, wine merchant, for wine	170 0 0	
2	John Radcliffe, upholsterer, for furniture	235 19 0	
	&c. &c. &c.		
	Total debts .	£24,593 6 8	
	But the personal estate sufficient to pay only		18,445 0 0
	The amount of the funeral testamentary expenses (less the duty to be returned) being . .		£510 0 0

(Signed) A B., Executor.

SCHEDULE No. 2. [In either case.]

Personal estate and effects, (if any,) not included in Schedule No. 1.

Legacy Duty.

20 Geo. III. c. 28.
23 Geo. III. c. 58.
29 Geo. III. c. 51.

Duties on receipts for legacies.

By these Acts *ad valorem* duties were granted throughout Great Britain for the receipt or other discharge for any legacy left by any will or other testamentary instrument, or for any share or part of a personal estate divided by force of the Statute of Distributions, or the custom of any province or place.

36 Geo. III. c. 52.

Duties repealed.

The before mentioned duties upon receipts for legacies or residues upon which duties were imposed by this Act, were hereby repealed.

Duties on legacies.

Sect. 2.—New duties granted, *viz.* :—Upon every legacy, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or more, given by any will or testamentary instrument of any person who shall die after the passing of this Act, (26th April, 1796,) out of the personal estate of the person so dying, and also upon the clear residue of the personal estate of every person who shall so die, whether testate or intestate, and leave personal estate of the clear value of 100*l.* or upwards, which shall remain after deducting debts, funeral expenses, and other charges, and specific and pecuniary legacies, (if any,) whether the title to such residue, or to any part thereof, shall accrue by virtue of any testamentary disposition or upon intestacy. Such duties being a per-centage on the value of each legacy or share of residue, increasing with the remoteness of the degree of collateral consanguinity to the deceased, no duty being charged on relatives in the ascending or descending line, and the highest rate of duty (6*l. per cent.*) being made payable also by strangers in blood to the deceased. Legacies, &c., to the husband or wife of the deceased, or any of the Royal Family are exempted.

Sect. 3.—The duties to be under the care, management, and direction of the Commissioners of Stamps.

Officers to be appointed to receive the duties.

Accounts to be kept at the Head Office.

Sect. 4.—The Commissioners to appoint proper persons in the several counties, &c., in Great Britain, as occasion shall require, to collect and receive the duties, and keep accounts, to be transmitted to the Head Office; and upon payment of the duty at the Head Office to cause the same to be entered in books, and to be set down therein to the account of the personal estate in respect whereof the duty is paid, and to make like entries upon the transmission of the proper accounts from the several officers, to whom proper orders are to be given for that purpose. The accounts to be kept with proper references, in alphabetical order, according to the surname of the testator or intestate, so that it may at all times appear what payments have been made in respect of the personal estate of any testator or intestate.

Sect. 5.—The Commissioners may provide paper adapted for receipts on the payment or satisfaction of any legacy or residue, and cause to be printed thereon the form of words in the schedule to the Act annexed; and persons requiring such receipts may cause the same to be duly filled up; and, also, upon any vellum or parchment, or any other paper not provided by the Commissioners, to use the like form.

Forms for receipts to be provided.

Sect. 6.—The duties, in all cases where not otherwise provided, to be accounted for, answered, and paid by the person having or taking the burthen of the execution of the will or other testamentary instrument, or the administration of the personal estate of any deceased person, upon retainer for his own benefit, or for the benefit of any other person, of any legacy or part of any legacy, or the residue of any personal estate, or of any part of such residue which he shall be entitled to retain either in his own right, or in the right or for the benefit of any other person; and also upon delivery, payment, or other satisfaction or discharge whatsoever of any legacy, or any part of any legacy, or of the residue of any personal estate, or any part of such residue, to which any other person shall be entitled; and in case he shall so retain any legacy, &c., upon which any duty shall be chargeable, not having first paid such duty, or shall deliver, pay, or otherwise howsoever satisfy or discharge any legacy, &c., to which any other person shall be entitled, and upon which any duty shall be chargeable, having received or deducted the duty, in every such case the duty which shall not have been duly paid and satisfied according to the provisions of this Act, shall be a debt of such person having or taking the burthen of such execution or administration to his Majesty; and in case any such person shall deliver, pay, or otherwise howsoever satisfy or discharge any such legacy, &c., to or for the benefit of any person entitled thereto, without having received or deducted the duty, (such duty not having been first duly paid,) the same shall be a debt to his Majesty, both of the person who shall make such delivery, &c., and of the person to whom the same shall be made.

Duty to be paid by executor, &c., upon retaining or paying legacy.

To be a debt due from him; and from legatee also, if legacy paid without deducting the duty.

Sect. 7.—Any gift by any will or testamentary instrument of any person dying after the passing of this Act, which shall by virtue of such will or testamentary instrument have effect or be satisfied out of the personal estate of such person, or out of any personal estate which he shall have power to dispose of as he shall think fit, shall be deemed and taken to be a legacy within the intent and meaning of this Act, whether the same shall be given by way of annuity or in any other form, and whether the same shall be charged only on such personal estate, or charged also on real estate of the testator who shall give the same, except so far as the same shall be paid or satisfied out of such real estate in a due execution of the will, &c., by which the same shall be given, and every gift which shall have effect as a donation *mortis causâ* shall also be deemed a legacy within the intent and meaning of this Act. NOTE.—See 45 Geo. III. c. 28, s. 4; and 8 and 9 Vict. c. 76, s. 4.

What to be deemed legacies.

Sect. 8.—The value of any legacy given by way of annuity, whether payable annually or otherwise, for life, or for years determinable on any life, or for years or other period of time, shall be calculated, and the duty thereon charged, according to the tables in the schedule annexed; and the duty paid by four equal payments, the first before or on completing the payment of the first year's annuity, and the three others in like manner successively during the three succeeding years; the value of the annuity, if determinable upon any contingency besides death, to be calculated without regard to the contingency: Provided, that if any such annuity determine by death before four years' payment become due the duty shall be payable in proportion only to the payments of the annuity actually accrued; and in case any such annuity determine upon any other contingency than death, not only all payments of duty which would otherwise become due after the happening of such contingency, if any, shall cease, but the person who shall have paid any duties previously due may apply for a return of so much as will reduce the same to the like duty as would have been payable, calculated according to the term for which the annuity shall

The value of annuities, how to be calculated; the duty to be paid by instalments, &c.

have endured; which abatement the Commissioners shall determine according to the tables, and shall pay out of moneys in their hands.

Annuities payable out of legacies.

Sect. 9.—The value of any legacy given by way of annuity for life or any period of time, charged on and payable out of any other legacy, shall be calculated, and the duty charged thereon, in the manner before directed; and the duty, if any, on the legacy charged with such annuity, shall be calculated on the value of such legacy after deducting the value of the annuity; and the duty for the annuity shall be paid by the person entitled to the legacy charged by four equal payments, in the same manner as if such annuity had been a direct gift to the annuitant, and subject to the like proviso as before, and the payment made for such duty shall be retained out of the first four years' payments of such annuity by equal portions.

Duty on legacies given to purchase annuities.

Sect. 10.—The duty upon any legacy given by direction to purchase an annuity shall be calculated upon the sum necessary to purchase such annuity according to the tables, and shall be deducted from such sum, and paid as in the case of other legacies; and the person paying such legacy, and the person for whose benefit the same shall be paid, shall be discharged, by payment of such duty, from all other demands in respect of the duty on such legacy; and the annuity shall be reduced in proportion to the amount of the duty, such reduction to be calculated in the same manner as the duty, and the purchase of such reduced annuity shall satisfy and discharge such legacy.

Duty on legacies where value can only be ascertained by application of the fund.

Sect. 11.—If any benefit be given in such terms that the amount or value can only be ascertained from time to time by the actual application of the fund allotted or made chargeable therewith, or if the amount or value of any benefit cannot, by reason of the form and manner of the gift, be so ascertained that the duty can be charged thereon under any other of the directions herein contained, then such duty shall be charged upon the money or effects which shall be applied from time to time, as separate and distinct legacies, and be paid out of the fund applicable or charged with answering the same.

Legacies enjoyed in succession, how duty to be charged.

Sect. 12.—The duty on any legacy or residue given to or so that the same shall be enjoyed by different persons in succession, who shall be chargeable with the duties at one and the same rate, shall be charged upon and paid out of the legacy, or residue so given, as in the case of a legacy to one person; and where the same shall be given so that it shall be enjoyed by different persons in succession, some of whom shall be chargeable with no duty, or with different rates of duty, so that one rate cannot be immediately charged thereon, all persons who shall be entitled for life only, or any other temporary interest, shall be chargeable as if the annual produce had been given by way of annuity; and such persons respectively shall be so chargeable, and the duty shall be payable when they shall begin to receive such produce, and be paid by equal portions as aforesaid; and where any other partial interest shall be given or shall arise out of such property, the duty shall be charged and paid as in like cases of partial interests charged on property given otherwise than in succession; and every person who shall become absolutely entitled to any such legacy or residue shall, when and as he shall receive the same or begin to enjoy the benefit thereof, be chargeable with and pay the duty as if the same had come to him immediately on the death of the person by whom such property shall have been given.

And by whom to be paid.

Sect. 13.—The duty payable on any legacy or residue to be enjoyed by different persons in succession, upon whom the duty shall be chargeable at one and the same rate, shall be deducted and paid by the executor, &c., upon payment or other satisfaction of any part of such legacy, or residue, to any trustee or other person to whom the same shall be paid in trust or for the benefit of the persons entitled, and if the same be not paid to a trustee, then such duty shall be deducted out of the capital, upon receipt, by any of the persons entitled, of any produce of such capital according to the amount of the capital, and where the duty shall be chargeable at different rates, then the executor, &c., shall be chargeable with such duties in

succession as he would be with the like duties in case of immediate bequest, unless the property shall have been paid to or vested in any trustee as aforesaid, in which case such trustee, or his representative, shall be chargeable in the same manner as if he had taken the burthen of the execution of the will; and in like manner where any partial interest shall be given, or shall arise out of any such property so to be enjoyed in succession, and shall be satisfied by the person so enjoying such property, such person shall be chargeable with the duties in respect of such interest, and shall retain and pay the same accordingly, in the same manner as if he had taken the burthen of the execution of the will; and in all such cases the person so chargeable shall be a debtor to the King in like manner, and shall be subject to the like penalties, as the person taking the burthen of the execution of the will.

Plate, &c., while enjoyed in kind, not liable to duty till in possession of person having absolute interest.

Sect. 14.—Provided, that no duty shall be paid on any articles of plate, &c., not yielding any income, and given so as that the same be enjoyed by different persons in succession, whilst the same shall be so enjoyed in kind only by any person not having any power of selling or disposing thereof; but if the same shall be actually sold or disposed of, or shall come to any person having power to sell or dispose thereof, or having an absolute interest therein, then the same duty shall be chargeable as if the same had been originally given absolutely, and shall be paid by the person for whose benefit the same shall be sold, or who shall have power to sell or dispose thereof, or an absolute interest therein, and shall become the debt of such person, but shall not be a charge on any person by reason of his having assented to such bequest, as executor, &c.

Legacies in succession charged whether by will or intestacy.

Sect. 15.—Provided, that where any legacy, or any residue, shall be so given that different persons shall become entitled in succession, the duty shall be charged as given to be enjoyed in succession, whether the persons entitled shall take the same under or by virtue of such will, or in default, and as entitled by intestacy.

Legacies in joint tenancy.

Sect. 16.—Where any legacy, or residue, shall be given to persons in joint tenancy, some of whom shall be chargeable with duty, and some not, the persons chargeable shall pay duty in proportion to their interests respectively; and if any person so chargeable shall become entitled by survivorship, or by severance to any larger interest, he shall be charged with the same duty as if the property had been originally given to him only.

Legacies subject to contingencies.

Sect. 17.—Where any legacy, or any residue, shall be given subject to any contingency which may defeat such gift, and whereupon the same may go to some other persons, such bequest (unless chargeable as an annuity) shall be charged as an absolute bequest to the person who shall take the same subject to such contingency, and such duty shall be paid out of the capital of such legacy, or residue, notwithstanding the same may upon such contingency go to some person not chargeable with the same duty, or with any duty; and if such contingency shall afterwards happen, and the property shall thereupon go in such manner that the same, if taken immediately after the death of the testator under the same title, would have been chargeable with a higher rate of duty, the person becoming entitled shall be charged with the difference between the duty so paid and such higher rate.

Legacies subjected to power of appointment.

Sect. 18.—Where any legacy, or the residue, shall be subjected to any power of appointment to or for the benefit of persons specially named or described as objects of such power, it shall be charged with duty as given to different persons in succession; and in charging the duty not only the persons who shall take previous or subject to such power, but also any persons who shall take under or in default of any appointment, when and as they shall so take respectively, shall, in respect of their several interests, whether previous or subject to or under or in default of appointment, be charged with the same duty and in the same manner as if the same interests had been given to them respectively in and by the will containing such power, in the same order and course of succession as shall take place under and by virtue of such power,

or in default of execution thereof, as the case may happen to be; and where property shall be given for any limited interest, and a general and absolute power of appointment shall also be given to any person to whom the property would not belong in default of such appointment, such property, upon the execution of such power, shall be charged with the same duty and in the same manner as if it had been immediately given to the person having and executing such power, after allowing any duty before paid in respect thereof; and where property shall be given with any such general power, which property in default of appointment will belong to the person to whom such power shall also be given, it shall be charged with duty in the same manner as if it had been given to such person absolutely in the first instance without such power.

Personal estate directed to be applied in purchase of real estate.

Sect. 19.—Any money directed to be applied in the purchase of real estate shall be charged with duty as personal estate, unless it be so given as to be enjoyed by different persons in succession, and then each person entitled in succession shall pay duty in the same manner as if it had not been directed to be applied in the purchase of real estate, unless the same shall have been actually so applied before the duty accrued; but no duty shall accrue after the same shall have been actually applied for so much thereof as shall have been so applied: Provided that, in case before the same or some part thereof shall be actually so applied any person shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith, or with so much thereof as shall not have been applied, the same duty which ought to be paid by such person, if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such, shall be charged on such person, and raised and paid out of the fund remaining to be applied.

Estates *pur auter vie.*

Sect. 20.—Estates *pur auter vie*, applicable by law in the same manner as personal estate, shall be chargeable with the duties hereby imposed as personal estate.

Money left to pay duty not chargeable.

Sect. 21.—Provided, that if any direction be given for payment of the duty upon any legacy out of some other fund, so that such legacy may pass to the person free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty.

Mode of ascertaining duty on property not reduced into money.

Sect. 22.—In cases of specific legacies, and where the residue shall consist of property not reduced into money, the person having or taking the burthen, &c., or by whom the duty ought to be paid, may set a value thereon, and offer to pay the duty accordingly, or require the Commissioners, at his expense, to appoint a person to set such value; and the Commissioners may accept the duty offered if they think fit; but if they shall not be satisfied with the value so set, they may appoint a person to appraise such effects, and to set a value thereon, on which value they shall assess the duty; but if the person by whom such duty shall be payable shall not be satisfied with such valuation, he may cause the same to be reviewed by the Commissioners of the Land Tax of the place where such effects shall be, at their next meeting if fourteen days shall have elapsed, and if not then at the next succeeding meeting, of which appeal six days' notice shall be given to the said Commissioners of Stamps, and the said Commissioners of the Land Tax shall and may (if they think fit) appoint a person to appraise such effects, and set a value thereon, and shall and may hear and determine such appeal in the same manner as in any other cases of appeal, and with the like authorities, and their judgment shall be final; and if the valuation made under the authority of the Commissioners of Stamps shall not be so duly appealed from, or shall be affirmed, the duty shall be paid according to such valuation; and if any variation be made, the duty shall be paid according to such variation; and if the duty assessed in manner aforesaid shall exceed the duty offered to and refused by the said Commissioners of Stamps the expense of such appraisement and other proceedings shall be borne by the person by whom such duty shall be payable; and if any dispute shall arise between any person entitled to any such legacy, or residue, and any person having or taking the burthen of the administration,

with respect to the value, or to the duty thereon, the duty shall be assessed by the said Commissioners of Stamps on reference to them by either party; and if the value on which such duty ought to be paid shall be in dispute, the said Commissioners of Stamps shall cause an appraisement to be made, at the expense of the person by whom such duty ought to be paid, in the manner directed in other cases, and assess the duty accordingly; and if such person shall be dissatisfied with such valuation, or the assessment, the same shall be reviewed and finally determined by the said Commissioners of the Land Tax, upon appeal to them as before directed; but if such valuation or assessment shall not be appealed from, or shall be affirmed, the duty shall be paid according thereto; and if any variation be made, then according to such variation; and in case the effects shall be at the distance of ten miles from London, the like application may be made to such person as shall be deputed for that purpose by the Commissioners to act in their stead, and the person deputed shall act as the Commissioners are authorized to act, subject to the instructions and control of the Commissioners.

Duty on legacies not satisfied in money.

Sect. 23.—Where any legacy, or residue, shall be satisfied otherwise than by payment of money or application of specific effects, or shall be released for consideration, or compounded for, the duty shall be charged according to the value of the property taken in satisfaction, or as the consideration for release thereof, or composition for the same: Provided, that if any legacy shall be made in satisfaction of any other legacy, the duty shall not be paid on both subjects, but on that yielding the largest duty.

Legatee refusing to accept legacy, duty deducted, to pay costs in case of suit.

Sect. 24.—If any person chargeable with duty, shall declare himself ready and willing and shall accordingly offer to pay any legacy or residue, deducting the duty, or to deliver or otherwise dispose of any specific legacy, or property, part of residue, to or for the benefit of the person entitled thereto, or to any trustee for such person, upon payment of the duty, and the person entitled, or the trustee, shall refuse to accept such offer, and to give a proper release and discharge, then, although no actual tender shall be made, if any suit shall be afterwards instituted for such legacy or effects the Court may order all costs, charges, and expenses attending the same to be paid by the person who shall have refused to accept such offer, or to be deducted out of such legacy or effects, together with the duty, as the Court shall see fit; and in case any suit shall be instituted for any legacy or residue and the person sued shall be desirous of staying proceedings on payment of the money due, or delivering or otherwise disposing of the specific effects demanded, after deducting or receiving the duty payable thereon, the Court may on application in a summary way make such order for payment of such legacy, or residue, or disposing of such effects, and payment of the duty, and all such costs, charges, and expenses as shall be just.

Party may stop proceedings on payment of bequests, deducting duty.

If suit instituted, the Court to provide for payment of duty.

Sect. 25.—If any suit be instituted concerning the administration of the personal estate of any person in which any direction shall be given touching the payment of any legacy or residue, the Court shall, in giving directions concerning the same, provide for the due payment of the duties; and in taking any account, or otherwise, the Court shall take care that no allowance be made in respect of any legacy or residue without due proof of the payment of the duties.

Legacies and duty may be paid in part.

Sect. 26.—Provided always, that any executor, &c., may from time to time pay, deliver, or otherwise dispose of any legacy or any part of any legacy, or make distribution of any part of the residue, on payment of the duty in respect of such part of such personal estate.

No legacy to be paid without a receipt.

Sect. 27.—No executor, &c., nor any trustee, or other person hereby directed and required to account for any duty, shall pay, deliver, or otherwise dispose of, or in any manner satisfy, discharge, or compound for any legacy or residue, without taking a receipt or discharge in writing for the same, expressing the date of such receipt or discharge, and the names of the testator, or intestate, and of the person to whom such receipt shall be given, and of

the person to whom such legacy or residue shall have been given or shall have belonged, and the amount or value of the legacy or residue for which such receipt shall be given, and also the amount and rate of the duty thereon; and no written receipt for any legacy or residue shall be received in evidence, or be available, unless it be stamped as required by this Act; and no evidence shall be given of any payment, satisfaction, or discharge, release or composition, of such legacy or residue, without producing such receipt duly stamped, unless the actual payment of the duty shall first be given in evidence: Provided that a copy of the entry in the books of the Commissioners of the payment of such duty, shall be admitted as evidence: Provided also, that payment of any annuity or any payment in respect of any legacy directed to be charged as an annuity shall not be deemed a payment for which such stamped receipt shall be required, except the several payments which shall complete the payments for the first four years.

No receipt available unless duly stamped, &c.

Paying legacy without taking and stamping receipt; or taking legacy without giving receipt, penalty 10*l. per cent.* on value.

Sect. 28.—Any person having or taking the burthen, &c., and any trustee or other person required to account for any duty, who shall pay, deliver, or otherwise dispose of, or in any manner satisfy or discharge or compound for any legacy or residue, without taking such receipt in writing and causing the same to be stamped within the time hereby allowed, shall forfeit 10*l. per cent.* on the money, or the value of the property if not money, for which such receipt ought to have been given; and every person receiving or taking the benefit of any such money or other property without giving a written receipt, in which the duty payable in respect thereof shall be expressed to have been allowed or paid to the person to whom such receipt shall be given, and which shall bear date on the day of signing the same, shall forfeit 10*l. per cent.* on the money or on the value of the property.

Receipts to be stamped within twenty-one days.

Sect. 29.—Every such receipt shall be brought within twenty-one days after the date to the said Head Office of the Commissioners, or to some other office to be appointed for such purpose, to be stamped, paying the duty for the same, and upon such payment the Receiver General or other proper officer, shall write upon such receipt an acknowledgment of the payment in words at length, and bearing date the day on which such payment shall be made; and shall subscribe his name thereto, and enter an account thereof in a book or books to be provided for that purpose, to the intent that he may be thereby charged with the sum so paid; and in case the duty shall be so paid at the said Head Office, then the receipt shall be forthwith stamped; and in case it shall be paid at any other office, the receipt shall be transmitted, within twenty-one days, to the said Head Office, to be stamped, and the same shall be stamped accordingly; and in case the person paying such duty at any such office to be appointed as aforesaid shall be desirous that the same should be transmitted to the said Head Office by the officer, and shall leave the same with him for such purpose, such officer shall thereupon deliver an acknowledgment that such receipt has been left with him, and shall transmit such receipt to the Head Office, and the same shall be sent again to such officer as soon as conveniently may be after the stamping thereof; and such officer shall deliver back the same to the person entitled thereto, upon re-delivery of the acknowledgment given for the same: Provided, that if any such receipt shall not be so brought within twenty-one days as aforesaid, it shall nevertheless be lawful to carry the same to the Head Office within three calendar months after the date thereof, paying the duty for the same, and also the further sum of 10*l. per cent.* on such duty, by way of penalty, on payment of which duty and penalty the Commissioners are required to stamp such receipt; but they or any of their officers shall not on any pretence whatever, except as hereinafter directed, stamp any receipt for any legacy or residue, unless the duty shall be paid, and such receipt or discharge produced within the times and in the manner hereinbefore respectively limited and appointed. See page 641, *post*.

May be stamped within three months on payment of duty, and 10*l. per cent.* thereon.

Mistakes in paying duty

Sect. 30.—If it shall appear to the Commissioners, upon oath or affirmation, to be administered by a Justice of the peace, or master or master extraordinary

in Chancery, that less duty has been paid than ought to have been paid, by mistake, without any intention to defraud, and if application be made to rectify such mistake, before any suit shall be instituted concerning the same, and within three calendar months, the said Commissioners may accept the difference, together with 10*l. per cent.* thereon in full, and which shall be in discharge of all penalties incurred by non-payment, and cause an acknowledgment to be written on the receipt, and also cause such receipt or discharge to be properly stamped, if necessary.

may be rectified within three months.

Sect. 31.—Provided, that the party paying any legacy, or residue, or receiving the same, contrary to this Act, who shall, within twelve calendar months, discover the other party offending, so that such party be convicted, such person shall be indemnified.

Persons indemnified on discovering offenders.

Sect. 32.—Provided, that where, by reason of the infancy, or absence of any person entitled to any legacy, or residue, the person taking the burthen, &c., cannot pay the same, he may pay it after deducting the duty thereon, into the Bank of England, with the privity of the Accountant General of the Court of Chancery, to the account of the person for whose benefit the same shall be so paid; and the Accountant General shall give his certificate as usual in such cases, on production of the certificate of the Commissioners that the duty has been paid; and such payment into the Bank shall be a sufficient discharge, provided the duty be also paid; and such money shall be laid out by the said Accountant General, &c., and the fund, with the dividends thereon, shall be transferred and paid to the person entitled, on application to the Court, by petition or motion, in a summary way: Provided, that if it appear that such money or any part thereof has been improperly paid into the Bank, the Court upon petition, in a summary way, may dispose thereof, and of the funds, and dividends, in such manner as justice shall require: Provided also, that if it shall appear that the duty paid was more than ought to have been paid, the person who shall have paid it may apply to the Commissioners to repay the excess; and the Commissioners are hereby authorized to repay the same to the person entitled to receive it, or to pay it into the Bank, to the same account; and if the duty paid be less than ought to have been paid, the person who paid such money into the Bank may upon payment of the full duty, with such penalties, if any, as ought to be paid, apply to the Court in a summary way for the repayment of the further sum paid for such duty out of the money in the Bank, which payment the Court is hereby authorized to order.

If by infancy or absence legacies cannot be paid, the money may be paid into the Bank.

Where improperly paid in, or more or less than the proper duty has been paid.

Sect. 33.—If, at the end of two years after the death of any person, it shall appear to the Commissioners that it will require time to collect the debts or effects then outstanding, or that from circumstances it will be difficult to ascertain or adjust the amount of the clear residue, and the parties interested shall be desirous of compounding for the duty, they may, with the consent of the Commissioners, make application to the Court of Exchequer in England or Scotland respectively, for leave to compound, stating the particulars of the estate for which such composition shall be proposed to be made, and whether any other property then outstanding hath come to the knowledge of any of the parties, and the nature thereof, and the circumstances attending the same; and the Court may appoint a person to set a value on the property and to adjust and settle the duty which, under all circumstances, ought to be paid, and the said Commissioners are required, if the Court confirm the said adjustment, and order the duty to be accepted accordingly, to accept the sum so adjusted, in full discharge and according to such order, and to enter the same in their books accordingly, and to grant certificates thereof, expressing the receipt of such duty by way of composition under such order; and all persons shall be discharged from any further payment of duty on the same; and in all future payments of such property the same may be paid, applied and disposed of without having the receipt stamped as hereinbefore directed; provided such receipts or discharges shall express the same to be given under the authority of such composition, and not liable to duty: Provided always, that the duty shall be paid

Duty may be compounded for in certain cases.

upon every part of the personal estate other than that which shall be specified in such affidavit, and for which composition shall have been made, as if no such composition had been made; and every person shall be liable to all the like penalties and forfeitures for not duly paying the duty not compounded for, and subject to the like rules, &c., for charging such duty, as if such composition had not been made.

If legacy refunded, the duty to be repaid.

Sect. 34.—If, after payment of duty, any debt shall be recovered against the estate of the deceased, or any loss shall happen, by reason whereof, or for any other just cause, any legatee shall be obliged to refund, the said Commissioners are required, on due proof to their satisfaction of the amount refunded, and that by reason thereof there hath been an over-payment of duty, to adjust the amount of such over-payment, and to repay the same or to allow the same in future payments.

Executors before retaining their legacies, to deliver the particulars and pay duty.

Sect. 35.—Whenever any executor, &c., shall be entitled to any legacy, or residue, he shall be chargeable with the duty whenever he shall be entitled, in the due course of administration, to retain to his own use any part of the said estate; and before retainer, he shall transmit to the Commissioners, or their officers, a note containing the particulars of such legacy, or residue, and the amount or value thereof, and the duty which he shall offer to pay thereon; and the said Commissioners shall assess the duty thereon, and such duty shall be paid accordingly; and on payment the Receiver General, or officer appointed to receive the same, shall, at the foot of a duplicate of the said assessment duly stamped as the Commissioners shall direct, give a receipt for the duty, which receipt shall be a discharge; and in case any such person shall neglect to pay such duty within fourteen days after the same ought to have been paid, he shall forfeit treble the value of the duty.

Receipts for all legacies to be deemed receipts within former Acts.

Sect. 36.—Reciting doubts upon the construction of the 20, 23, and 29 Geo. III., whether the duties were intended to be imposed on all legacies, bequests, and dispositions by will whatsoever; it is declared, that all receipts and discharges for legacies, specific and pecuniary, and of any nature or kind whatsoever, and for all personal estate whatsoever, in any manner given or disposed of by will, whether by way of annuity or other particular bequest, or by way of residue, or otherwise, as well as on personal estate distributable upon intestacy, shall be deemed and taken to be receipts and discharges for legacies within the intent and meaning of the said Acts; and shall be given accordingly.

If probate made void, duty to be repaid or allowed to rightful executor.

Sect. 37.—If the authority under or by colour of which any person shall have administered the estate of any person deceased shall be void, or be repealed or declared void, and such person shall have paid any duty which shall not be allowed to him, the money shall, on proof to the satisfaction of the Commissioners, be repaid to him; but in case such duty ought to have been paid by the rightful executor, &c., the payment shall be valid and be allowed in account with such rightful executor, &c., and be deemed payments in the due course of administration.

Perjury.

Sect. 38.—Swearing falsely to incur the pains of perjury.

Altering receipts.

Sect. 39.—If any person alter any assessment or receipt after the same shall have been signed by the officer, or shall utter as true any such altered assessment or receipt, with intent to defraud his Majesty or any other person, he shall forfeit 500*l.*

Receipt duty not payable.

Sect. 41.—Every receipt duly stamped as required by this Act, shall be free from all other stamp duties upon receipts.

Former Acts.

Sect. 42.—The powers, &c., of former Acts to be of full force with relation to the duties imposed by this Act so far as the same are applicable.

Penalties.

Sects. 43 & 44.—As to suing for penalties. See p. 515, *ante*.

Limitation of actions.

Sect. 47.—Actions brought for anything done in pursuance of this Act, to be commenced within six months, &c.; and the defendant may plead the general issue, and give this Act and the special matter in evidence, &c.

For the schedule containing a table for valuing an annuity on a single life, see the end of the TABLE OF DUTIES, Part 2.

37 Geo. III. c. 135.

Amending the last Act as to money paid into court.

Amending the last mentioned Act in respect of legacies paid into the Court of Chancery, by giving directions as to the filing and entering of the Accountant General's certificates and drafts, and by authorizing the Court to make orders respecting the moneys so paid in.

39 Geo. III. c. 73.

Specific legacies to corporations and societies exempt.

No legacy consisting of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles given or bequeathed to or in trust for any body corporate, aggregate or sole, or to the society of Serjeants' Inn, or any of the Inns of Court or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society, or school, and not for the purposes of sale, to be liable to any duty imposed on legacies.

Also certain bequests to the British Museum.

Sect. 2.—Exempting from duty the bequest of the Rev. Clayton Mordaunt Cracherode to the British Museum of his collection of books, drawings and prints, gems, coins, &c.

42 Geo. III. c. 99.

Summary process against executors, &c., for non-payment of duties.

Sect. 2.—In every case in which any executor or administrator shall not have paid the duties granted and payable upon or in respect of any legacies, or any personal estate, or any share or shares of any personal estate of any persons dying intestate, in pursuance of the 36 Geo. III. c. 52, or any other Act or Acts relating to duties on legacies or shares of personal estates, within proper and reasonable time, the Court of Exchequer may, upon application to be made for that purpose on behalf of the Commissioners appointed for managing the duties on stamped vellum, parchment and paper, on such affidavit or affidavits as to the Court may appear to be sufficient, grant a rule requiring any such executor or administrator to show cause why he should not deliver to the Commissioners an account, upon oath, of all the legacies, or of the personal property, respectively, paid, or to be paid or administered by him as the case may be; and why the duties on such legacies or any shares or residue of any such personal estate have not been paid, or should not be forthwith paid according to law; and to make any such rule absolute in every case in which the same may appear to the Court to be proper and necessary for the better enforcing the payment of any of the said duties.

Ecclesiastical Courts to send accounts of wills, &c., to the Stamp Office.

Sect. 3.—The Commissioners may require of every Register or other officer of any Ecclesiastical Court having the custody or care of any wills proved in any such Court, or account or register of any administrations granted in any such Court, an account of all such wills and letters of administration, together with the particulars relating thereto, and extracts from any such wills as may seem necessary to such Commissioners, on payment of such fees as shall be agreed

upon for the same, or as, in case of any dispute, shall be settled and allowed by the Ecclesiastical Court for that purpose. And every such officer as aforesaid is hereby authorized and required, within one month after any such requisition so made by the Commissioners, or any three of them, or by any person authorized by them for that purpose, to make out and deliver such account as aforesaid within one month after any demand made as aforesaid; and any Register or other officer making default or delivering any false account to forfeit, for every offence, 50*l.*

Exempting certain specific legacies to Eton College and money to build and endow a hospital.

Sect. 4.—Reciting that the late Anthony Morris Storer had bequeathed to the provost and fellows of Eton College, to be kept for the use of the College and not for sale, a valuable collection of books, drawings and prints; and that the late Samuel Whitbread had bequeathed to trustees 8000*l.* in trust for erecting and endowing a public hospital, or infirmary, in or near Bedford, for the reception of sick and lame objects, and that it was expedient that the said legacies should be exempted from the duties on legacies; enacts that the said legacies be exempted from the payment of the duties on legacies; and that all persons who had incurred any penalty by any neglect or omission relating to the non-payment of the duties should be indemnified.

44 Geo. III. c. 98.

The duties granted by the 36 Geo. III. c. 52, repealed, and other increased duties of the like kind on legacies and residues to the same persons, by the same designations, granted in lieu, and to be collected under the same provisions.

The duties on receipts for legacies before 27th April, 1796, to be payable for two years only.

Sect. 12.—The duties on receipts for legacies given by persons who died before the 27th April, 1796, (the passing of the 36 Geo. III. c. 52,) payable under the Acts previous to that date, to continue payable for two years from 10th October, 1804, and after that period the duties granted by this Act to be payable, whether derived from a person who died before or after the former date.

45 Geo. III. c. 28.

Additional duties.

By this Act certain further and additional duties were granted on legacies, *viz.*:—

Legacies to children, &c., and real estate first charged.

By imposing a duty of 1*l. per cent.* on legacies and residues to children and their descendants; by increasing the higher duties payable by remote kindred and strangers in blood; and by extending all the duties to moneys to arise from real estates directed to be sold.

Sect. 2.—Not to extend to estates of persons dying before the passing of the Act.

Sect. 3.—Nor to legacies to a husband or wife, or any of the Royal family.

What shall be deemed a legacy under this Act.

Sect. 4.—Every gift by any will or testamentary instrument of any person dying after the passing of this Act, which by virtue of any such will, &c., shall have effect or be satisfied out of the personal estate of such person so dying, or out of any personal estate which he shall have power to dispose of as he shall think fit; or which shall have been charged upon, or made payable out of any real estate, or be directed to be satisfied out of any moneys to arise by the sale of any real estate of the person so dying, or which such person may have power to dispose of, whether the same shall be given by way of annuity, or in any other form, to be deemed and taken to be a legacy within the true intent and meaning of this Act: Provided, not to extend to the charging with the said duties any specific sum or sums of money, or any share or proportion thereof,

charged by any marriage settlement, or deed or deeds upon any real estate, in any case in which such specific sum or sums, or share or proportion shall be appointed or apportioned by any will, or testamentary instrument, under any power given for that purpose by any such settlement, deed or deeds. See 8 & 9 Vict. c. 76, s. 4, *post*.

By whom duties on legacies charged on real estate to be paid.

Sect. 5.—The duties on legacies charged upon or payable out of real estate, or out of moneys to arise by the sale of real estate, or upon residues of such moneys, shall be accounted for, answered, and paid by the trustee to whom the real estate shall be devised, or if there shall be no trustee, then by the person entitled to such real estate, subject to such legacy, or by the person empowered or required to pay or satisfy any such legacy; and the said duties shall be retained by the person paying any such legacy or share in like manner, and according to such rules and regulations, and under and subject to such penalties, as far as the same can be made applicable, as are contained in the said Act of the 36 Geo. III. c. 52.

The provisions of 36 Geo. III. c. 52, to be observed.

Sect. 7.—The duties on legacies granted by the 44 Geo. III. c. 98, and by this Act, shall be raised, levied, accounted for, and paid under and according to the provisions of the said Act of the 36 Geo. III. and all the provisions, clauses, regulations, penalties, forfeitures, matters and things in the said Act contained in relation to legacies out of personal estates, or to the collecting any duties thereon, or valuation of any annuities, or periods of paying the duties thereon, shall, so far as the same can be made applicable, and in all cases not expressly provided for by this Act, extend to and be put in force in relation to legacies, annuities, and shares of money arising or to arise out of any real estate; and all directions, provisions, forfeitures and penalties in the said Act as to executors and administrators shall be applied to all trustees and owners of any real estates, chargeable with legacies, annuities, or shares of money, or out of which, or any money to arise therefrom, any such legacies, annuities, or shares of money, shall be to be satisfied, as if repeated herein.

Powers of said Act, and others to extend to this.

Sect. 9.—All powers, provisions, rules, methods, matters and things in the 36 Geo. III., and any other Acts in force relating to stamp duties (and not hereby altered), to be of full force and effect with relation to the duties herein mentioned.

48 Geo. III. c. 149.

All the former duties repealed, and others of the same description granted in lieu, to be collected under the same provisions.

Sect. 43.—Persons who have ignorantly or inadvertently incurred penalties by non-payment of legacy duties before the passing of this Act indemnified therefrom on payment of such duties before the 31st January, 1809.

Receipts may be stamped after three months.

Sect. 44.—In all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy or residue of any personal estate which shall have been given by will or other testamentary instrument, or have devolved to any person or persons upon intestacy, shall be brought to the Head Office, to be stamped after the expiration of three months from the date thereof, the Commissioners may cause the same to be stamped for making the same available, on payment of the duty which shall be payable in respect thereof, together with the penalty incurred in consequence of the same not having been brought to be stamped before the expiration of such three calendar months; and where any such receipt shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain, the Commissioners may remit any penalty that may have been incurred thereon, and cause the same to be duly stamped, on payment of the duty payable in respect thereof, anything in any Act to the contrary notwithstanding.

Where receipts signed out of Great Britain.

55 Geo. III. c. 184.

Present duties.

The duties granted by the last-mentioned Act repealed, and the present duties granted in lieu, for which see the TABLE, part 2.

Sect. 8.—All the powers, provisions, &c., contained in the Acts relating to the duties repealed, and to any prior duties of the same kind, to be of full force with respect to the new duties.

8 & 9 Vict. c. 76.

What shall be deemed legacies.

Sect. 4.—Reciting that under and by virtue of several Acts certain duties have been granted in Great Britain and Ireland upon legacies, and doubts have been entertained whether certain gifts are legacies liable to the duties: It is enacted, that every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable, or shall have effect or be satisfied out of the personal or moveable estate or effects of such person, or out of any personal or moveable estate or effects which such person hath had, or shall have had power to dispose of, or which gift is or shall be payable, or shall have effect or be satisfied out of, or is or shall be charged or rendered a burden upon the real or heritable estate of such person, or any real or heritable estate or the rents or profits thereof, which such person hath had, or shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise by the sale, burden, mortgage or other disposition of any such real or heritable estate, or any part thereof, whether such gift shall be by way of annuity, or in any other form, and also every gift which shall have effect as a donation *mortis causâ* shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain or Ireland respectively, and shall be subject and liable to the duties accordingly. Provided that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or the issue of any such person, shall be liable to the said duties under the will in which such sum is or shall be appointed or apportioned in exercise of such limited power.

Ireland.

The statutes, not before mentioned, relating to *Probate Duty* in Ireland are the 54 Geo. III. c. 92; 56 Geo. III. c. 56, ss. 115 *et seq.*; and the 5 & 6 Vict. c. 82, ss. 35 and 36: and to *Legacy Duty* the 54 Geo. III. c. 92; 56 Geo. III. c. 56, s. 128; and the 5 & 6 Vict. c. 82, ss. 37, 38, and 39. See "APPENDIX."

IN ORDER to establish a charge of legacy duty, the concurrence of several things, *within the intention of the statutes*, is requisite, *viz.* :

First,—The writing under which the property accrues must, necessarily, be a will or testamentary instrument.

Secondly,—The gift must come within the description of a legacy furnished by the different enactments.

Thirdly,—The testator must be a person within the meaning of the Acts of Parliament.

Each of the several points, thus suggested, has been the subject of discussion in the different Courts, on various occasions.

FIRST,—*As to the Will or Testamentary Instrument.*

This question, in its general character, is altogether independent of that of legacy duty, and is one more peculiarly for the exercise of the judgment of the Ecclesiastical Court; it will no further be entertained by the writer than by the mention of a few cases in other Courts, commencing with one arising from a claim made for legacy duty, in which the learned Barons differed in opinion.

The Attorney General v. *Jones* (*a*) was an information against the executors of *William Franklin*, deceased, for legacy duty on 8000*l.* bequeathed to *Ellen Franklin*. A verdict was taken for the Crown, subject to the opinion of the Court.

By an Indenture bearing date the 25th March, 1813, between the testator of the one part, and the defendants of the other, the testator assigned to the defendants a certain leasehold house, the sum of 7500*l.* government stock, and all other personal estate, whatsoever, then belonging to him, or which should belong to him at the time of his decease, upon trust for the use of the testator for his life, and, after his decease, for *Ellen Franklin*, as therein mentioned; with a proviso that it should be lawful for the testator, at any time, by deed or will, to revoke or make void, alter or change all or any of the trusts of the said property.

The testator on the 15th April following made his will, reciting the indenture and the power, and confirming the deed in all respects,

(*a*) 3 Price, 368.

except as therein mentioned. He gave directions as to the payment of his funeral and testamentary expenses and debts, and bequeathed several pecuniary legacies, appointing the defendants his executors; who duly proved the will.

The testator died in November, 1813, having, during his life, remained in possession of all the property comprised in the indenture; the stock still standing in his name at the time of his death. The clear residue amounted to 8000*l.*, which the executors retained for the benefit of *Ellen Franklin.*

The case was twice argued. The Court delivered their opinion *seriatim.*

Richards, B.—If there should be any doubt about the first instrument being a testamentary instrument, the inquiry would be extended to the consideration whether the two instruments, connected together as they were, were not to be regarded as a testamentary instrument. He was of opinion that the deed was now to be considered as a testamentary instrument.

The deed was without any consideration; it was a voluntary deed; the testator kept it in his own possession, although in form sealed and delivered as a deed, it was never delivered to the parties; the trustees did not seem even to have known anything of it; it appeared to be purely a deed, in effect, between him and himself. He continued, in point of law as well as of fact, in complete possession, management, and control of the property. It seemed to be as completely testamentary as if he had made a will, to be ambulatory till his death. The Court must look not merely to the form of the thing, but the substance; the form being that of a deed with the interposition of a trustee did not, his Lordship thought, make any difference. After the deed, the testator made his will, and incorporated the deed with it. He referred to the deed; stated that he had power to revoke it; he confirmed it, however, except so far as he altered it. If he then had given the legacy anew to the lady it would have passed under the will. It was ultimately under the terms of the will that he conferred a testamentary benefit on her, and it, therefore, seemed to his Lordship, that the two instruments might be fairly considered together. But he thought the true question arose under the deed itself. He admitted, that if a will had not been made, the tenor of the deed must have been attended to; and the property must have gone accordingly; but as it was, it must go in the nature of a testamentary disposition. His Lordship had given the matter a good deal of consideration, and was of opinion that the paper was to be

considered a testamentary paper; or that, in all events, the two together were testamentary.

Wood, B.—His Lordship could not agree in the opinion delivered. The question was, whether the indenture could be deemed a will or testamentary instrument within the meaning of the Legacy Duty Acts. The words in the Acts were used for the purpose of including any informal instrument which might still be, in effect, a will; for a will, properly speaking, was not complete unless executors were appointed; they might also have relation to Scotland. Many irregular instruments had been deemed testamentary, although they had been in point of form something like deeds; but he believed there was no instance where an instrument, properly made in due technical form, which could take effect as a deed, had been considered as testamentary. The present was the case of a deed regularly executed. It had all the requisites of a deed; but it would only pass what property the grantor had when he made it. The circumstances of the property being given to trustees for the life of the grantor, and of there being a power of revocation, could make no difference with respect to its being, or not being, a deed.

The confirmation of it by a will could not convert it into a will. Had there been no power of revocation would it not have been a good and valid deed? If there had been no such power, a will could not have altered the trusts; the deed would have prevailed; which showed, pretty clearly, that it was a deed. A second deed would not have affected it. There was no doubt that the legal estate passed from the grantor in his lifetime; and if he had appointed other executors by his will, everything that passed by the deed must have been recovered by the trustees. So far as any alteration was made by the will, legacy duty was payable under the 7th section of the 36 Geo. III. c. 52. If it had been done by another deed, under the power, there would have been nothing testamentary in that.

Graham, B., and the Lord Chief Baron *Thomson* were both of opinion that the deed was testamentary; there was no intention, whatever, in the owner of the property, to part with the possession or control of it during his life. The instrument was, in form and name, a deed, but, in substance, a will. Mr. Baron *Graham* particularly alluded to the power of revocation.

Judgment was, therefore, entered for the Crown.

Tompson v. *Browne* (*b*) was a case before the Master of the

(*b*) 3 Mylne & K. 32.

Rolls (Sir *C. Pepys*). The testator, by a deed dated 19 Aug. 1823, after reciting that he was desirous of making provision for certain persons, and had lately transferred stock into the names of trustees, declared the trusts of the stock, reserving to himself the power of revoking the trusts and appointing new ones. He died in 1826, and a question was raised by the trustees whether the settlement was not testamentary, and the property, consequently, liable to legacy duty. Reference was made to *The Attorney General* v. *Jones*.

The Master of the Rolls said, that the decision in that case seemed to have proceeded on the ground, that, under the circumstances, nothing passed from the maker of the instrument, so as to entitle any other person to interfere with the property in his lifetime; and he observed, "If there be anything in that decision to support the notion that where a person, by deed, settles property to his own use during his life, and, after his decease, for the benefit of other persons, a power of revocation reserved in such deed alters the character of the instrument, and renders it testamentary, and, consequently, subject to legacy duty, I can only say, that if this were law a great number of transactions, of which the validity has never been doubted, would be liable to be impeached."

The resemblance between these two cases consisted, it will be observed, in the power of revocation contained in the deed in each; and as this seems to have been considered, in the first case, as one feature tending to constitute a deed a testamentary instrument, it was essential to the decision, to which his Honour was about to come, to remove it out of the way; he, therefore, repudiated the doctrine. It was not, however, necessary to supersede the case altogether, in order to be enabled to arrive at a different result; it was sufficient to notice the material distinction between the two cases. See also *Fletcher* v. *Fletcher* (*c*).

Where, however, the deed and the will are made at, or about the same time, they will be considered as one act, and testamentary. See *Peacock* v. *Monk* (*d*), in which Lord *Hardwicke* held that "both instruments being done at the same instant (as it must be taken, being on the same day) it speaks the whole to be a testamentary act." His Lordship added, "in several cases the nearness of one act to another makes the Court take it as one, so that it is a testamentary act, though not strictly so, because not revocable." The same was also held by his Lordship in *Tomkyns* v. *Ladbroke* (*e*).

(*c*) 14 L. J. R. (N. S.) Chan. 66. (*d*) 1 Ves. sen 126. (*e*) 2 Ves. sen. 591.

SECONDLY,—*As to the Gift.*

The questions upon this head are various. The cases extend to the following subject matters, *viz.* :—

Release of debt due to the testator;
Bequests for charitable purposes;
Rent charges, or annuities charged on real estate;
Money to arise from the sale of real estate;
Money to be laid out in the purchase of real estate;

and with these may be classed the cases relating to the execution of powers of appointment, whether in respect of personal estate, or money arising from real estate.

Release of debt.

THE only case decided as to a release of debt is that of *The Attorney General* v. *Holbrook* (*f*), which was an information for legacy duty filed against the surviving executors of *Thomas Holbrook;* the claim being in respect of a release, by the will, to the brother of the deceased, and one of his executors, from a liability as surety for a debtor by bond; such release being a benefit under the will. A verdict was taken for the Crown, by consent, subject to the opinion of the Court.

The testator's will contained the following clause: "And moreover I hereby forgive the bond debt, both principal and interest, due to me, and entered into by *James Willis* and my brother, *James Holbrook,* with and for him, for the said *James Willis's* paying to me the principal sum of 4000*l.* and interest at 4*l. per cent.*, being the appraised value of my late brew-house, &c., and do order the said bond, at my decease, to be delivered up and cancelled."

The testator appointed *William Holbrook* and the said *James Holbrook,* both since deceased, and the defendants, his executors, all of whom proved the will. The bond in question, which was in the penalty of 8000*l.*, and dated the 28th December, 1787, was the joint and several bond of *James Willis* and of *James Holbrook,* as his surety. Interest was paid by *Willis* to the time of his death in 1807, and, from that time, by his executors, to the 1st January, 1811. The testator died in August, 1811. The question for the Court was, whether or not the principal sum was liable to legacy duty; and if so, whether or not the interest which had accrued due thereon was, also, subject to duty, and for what period. The Court held it to be quite clear that this was a legacy; the remission

(*f*) 3 Young & J. 114.

of a debt due to the testator was, to all intents and purposes, a bequest of so much money to the party, and must be so considered. The words of the different Acts of Parliament were large enough to comprehend the case of the forgiveness of a debt. But the Court also held, that the property having, as observed by one of their Lordships, attached to the legatee at the death of the testator, or, in the language of another of the Barons, the debt having become, *eo instanti*, at an end, no duty was payable on the interest.

Direction to pay debts.

Here may be mentioned the circumstance of a direction to pay the debts of another person, for which the testator was not liable; the creditors are, in such case, legatees, and must pay the duty on the debts (*g*). But a direction to pay debts of the testator, himself, barred by the Statute of Limitations, but not extinguished in law, does not constitute such debts legacies (*h*).

Charitable bequests.

ON the subject of the bequests for charitable purposes much difficulty has been experienced. The cases, which are somewhat conflicting, will be stated in the order in which they arose; the point in all of them being, not whether the gift, in reference to the subject matter, was taxable, nor so much with regard to the manner of it, although this latter point was primarily entertained, but whether the value amounted to 20*l.*, so as to come within the charge of duty in that respect; which question depended, again, upon another, *viz.*, Who were to be considered as the legatees? whether the ultimate objects of the testator's bounty, either individually or as a class, or the institution, in a general sense?

Re Franklin's Charity (*i*). A petition was presented to obtain the opinion of the Court on the question of legacy duty on the bequest of a charitable fund.

The testator bequeathed to the poor of the parish of Haddenham 50*l. per annum* for ever, to be laid out at Christmas in bread, and distributed by the minister and churchwardens to the most needy objects in the parish. The poor of *Haddenham* consisted of upwards of 820 persons, and no one person in the course of a year could receive more than the value of 2*s.* in bread.

The Vice-Chancellor was of opinion, that this was a legacy, upon which the duty ought to be paid; because, although it was not expressed to be given to any individual, it was, in effect, given in such a manner as that the executor held it in trust for certain purposes. The mode in which the legacy was to be applied did not admit of

(*g*) *Foster* v. *Ley*, 2 Bing. N. C. 269; 1 Hodges, 326.

(*h*) *Williamson* v. *Naylor*, 3 Y. & C. 208.

(*i*) 3 Young & Jervis, 554; 3 Simons, 147.

its being ascertained what share, or what precise benefit, any one individual would have in the legacy so given. It was, in effect, a gift for charitable purposes. It was so given that the kindred seemed to be out of the question, and there was a complete sum of 50*l.* for charitable purposes. With respect to legacies given to charities, there had been, by the general assent of mankind, a construction put upon the statutes, so as to charge such bequests with legacy duty. Where legacies had been given to treasurers of hospitals, and other charitable institutions, it had been considered as a matter of course to pay the duty. His Honour's opinion was that the legacy duty was payable. It was impossible to resort to the particular scale of *per-centage* payable in order to ascertain whether the duty was, or was not payable at all.

Re Wilkinson (*k*). The testator by his will, after giving certain legacies, bequeathed to the *Wesleyan Strangers' Friend Society* for visiting the sick and poor at their own houses, 100*l.* To the treasurer of the *Dispensary in Sloane Square,* 100*l.* To the treasurer of the *Westminster Hospital,* 100*l.*: and after giving certain other legacies he proceeded, "Finally, after my just debts and legacies are paid, my will and pleasure is, that all my money in bankers' hands, bills of exchange, &c., &c., be collected into cash, and laid out in the funds in the Bank of England, where I now have considerable property; and that my executors hereafter named, and their heirs and assigns do receive the interest thereof half-yearly, and divide it among poor pious persons, male or female, old or infirm, in 10*l.*, or 15*l.* as they see fit, not omitting large and sick families, if of good character."

The question was, whether legacy duty was payable on this latter bequest. The case was argued at considerable length, but it will be necessary only to refer to the judgment, which was delivered by Mr. Baron *Parke*.

His Lordship first referred to the 36 Geo. III. c. 52, s. 6, which directed that the duties should be accounted for, answered, and paid by the persons taking upon themselves the burthen of the execution of the will, upon retainer, delivery, payment or other satisfaction of any legacy, &c.; and also to the 55 Geo. III. c. 184, which imposed the duties in the same form.

His Lordship then alluded to the earlier statutes, imposing duties on the receipts for legacies; and he quoted the 7th sect. of the 36 Geo. III. c. 52, which declares what shall be deemed legacies; and,

(*k*) 1 Cro. M. & R. 142.

also, what his Lordship terms an important clause, the 11th section, which provides a mode of payment of duty, where a benefit is given in such terms that the amount or value of the benefit can only be ascertained from time to time, by the actual application of the fund. The 39 Geo. III. c. 73, is then alluded to, passed for the sole purpose of exempting from duty certain specific legacies which might be bequeathed to the Society of *Serjeants' Inn*, the *Inns of Court*, and *Endowed Schools;* and also a certain legacy which had been given to the trustees of the *British Museum* (*l*). Then referring to the 55 Geo. III. c. 184, and the terms by which the duties are imposed in the schedule, his Lordship continued:—Considering the provisions of these statutes together, it seemed clear, in the first place, that the legislature intended to subject all legacies above 20*l.* in value to a duty, whether given to individuals, or to bodies corporate, or societies. In the second place, it appeared to be equally clear, that the persons, bodies corporate, or societies who took the beneficial interest in the legacy, that is, those who actually received the benefit, were, ultimately, to pay the duty. And in the third place, that any benefit given by will, which should by virtue of the will be satisfied out of the personal estate, was a legacy within the meaning of the Act. In the present case who were the persons to take the beneficial interest in the legacy of the residue? They must be, either, first, the executors themselves; or, secondly, the individuals selected by them; or, thirdly, the whole body of poor and pious persons, out of whom the selection was to be made. The gift must enure to the benefit of one of the three descriptions of persons, for no others could be suggested; and there could be no case of a legacy under a will which was not beneficial to some persons. First, the executors had no beneficial interest in the legacy; their duty was simply to divide the annual interest among such poor and pious persons as they should think fit, in sums of 10*l.* and 15*l.* each. They could make no other appropriation or disposition of the money. It appeared to the Court, therefore, that they could not be charged as beneficial legatees. It appeared also that all poor and pious persons whatsoever could not be considered as a society, or body of persons, or class taking the benefit of the legacy. The whole body had no power or control over the fund, nor had any trustee or agent for them; nor had any individual falling under the description of poor and pious any right whatever to any portion of it. All he had was a chance of being nominated as a fit person to receive part of the

(*l*) See other exemptions referred to in *Re Griffiths*, p. 654, *post*.

money. The Court could not think that these persons were a body, taking, as such, the beneficial interest; and must, therefore, hold that the individuals selected were the persons who took a benefit under the will, and were, consequently, liable to the duty in those cases in which the duty attached; and the clause of the 36 Geo. III. c. 52, s. 11, referred to, seemed to the Court to be exactly applicable to the case.

The result was that such individuals would be liable to the duty where the sum received by each exceeded 20*l.*; and then, and not till then, the executors would be accountable. His Lordship observed, that by this decision they did not mean to question the legality of the practice of imposing the highest rate of duty on bequests to corporations or societies established for charitable purposes, or to individuals in trust for such societies. Legacies of this description were contained in this will, and they were cases in which the entire control and power over the legacy was vested in the corporation or society. In such cases the corporation or society might not improperly be considered as taking the entire beneficial interest. The case of *Ex parte Franklin*, the authority of which had been pressed upon the Court, was, his Lordship observed, more difficult to distinguish from the present, and he was not sure that it could be satisfactorily distinguished. It might possibly be contended, that the poor of one parish were in the nature of a corporation or society of persons, and that they took the legacy in that character. It was, however, in the opinion of the Court doubtful whether such a bequest could be properly compared to a legacy to a charitable institution; and the difficulty which occurred to the Vice-Chancellor in the way of considering it as a legacy to individuals, namely, that it was impossible to ascertain at the time of the gift what precise benefit any individual would have in that legacy, was certainly removed by reference to the 36 Geo. III. c. 52, s. 11. The result was, in the opinion of the Court, formed not without some difficulty, that the rule which had been obtained in this case must be discharged; and that the executors could not be called upon to pay the duty on the whole of the residue.

The case of *Re Wilkinson* was reviewed in that of *The Attorney General* v. *Nash* (*m*), which was an information for legacy duties filed against the executors under the same will for the purpose of carrying the question to a Court of Error. A special verdict was taken, judgment being by consent entered for the defendants,

(*m*) 1 M. & W 257.

and a writ of error brought by the Crown. Lord *Denman* delivered the opinion of the Court that the judgment should be affirmed. It was a judgment pronounced after very great deliberation, on a statute, on which, undoubtedly, some difficulty might arise; but it appeared to his Lordship that the Court were quite right in taking the view they did of the 11th section of the 36 Geo. III. c. 52, and he was at a loss to see how they could have taken any other. This section was not brought to the notice of the Vice-Chancellor in *Ex parte Franklin;* had it been, it might very well be doubted what view would have been taken of it. It was possible that even then the Vice-Chancellor might have carried his principle so far as to cover this particular case; but it was also possible that he might have taken the view which the Court of Exchequer, and the Court of Error took of the words of the section in question.

It is understood that the Court of Chancery felt itself greatly embarrassed by the view taken by the Courts of Law in the last case; the decision tending to strike at the root of the jurisdiction of that Court in the cases of charitable legacies, by, in effect, determining that there was no such thing as a charitable bequest; and it is presumed that it was the difficulty thus occasioned that gave rise to the suit of *Nash* v. *Morley* (*n*), which was instituted for the purpose of taking the direction of the Court as to whether the bequest of the residue under the will of the same testator, *John Wilkinson*, was a charitable gift or not. The cases of *Re Wilkinson* and *The Attorney General* v. *Nash*, were alluded to, but, whatever might be the supposed inconsistency in so doing, the Master of the Rolls, of course, felt obliged to hold that such bequest was a charitable gift.

The next case is that of *The Attorney General* v. *Fitzgerald* (*o*). The testator, *William Leamy*, bequeathed his residuary estate and effects to his executors, to be by them appropriated to the education of the poor of Ireland, principally those in or about the city of Limerick, as they, his executors, should, in their better judgment, deem meet, to give the bequest the most extensive efficacy.

The residuary estate consisted of 13,387*l.* Consols; and a scheme had been approved by the Court, for applying that sum in establishing and maintaining a school in Ireland, to be called "*Leamy's Free-school,*" for the education of the poor in Limerick, and of all such other poor in Ireland as might be willing to take

(*n*) 5 Beavan, 177. (*o*) 13 Sim. 83.

advantage thereof. A petition was presented by the governors of the charity for the purpose of taking the opinion of the Court as to the liability of the bequest to legacy duty; which came on for hearing with the cause on further directions. In the course of the argument an attempt was made to distinguish the case of a bequest to a corporation or society already in existence, and the case of a charity created by the testator.

The Vice-Chancellor said, It appeared to him, that there was a material distinction between the case "*In the matter of Franklin,*" and the case "*In the matter of Wilkinson.*" In the former, there was a gift of a perpetual annuity of 50*l.*, and to be disposed of as a charity. In the case, *In the matter of Wilkinson,* the Judges seemed to have considered that there was a gift of a sum in gross, which was at once to be disposed of by the executors, apparently as if it was not a charity. It seemed to his Honour that that, of itself, furnished a very considerable difference between the two cases; because, if the thing is to be considered as a charity in the origin, why then this Court must, of necessity, have a dominion over it, and will, from time to time, determine in what manner it shall be employed; and long before any person participated the legacy must be paid. It appeared to his Honour, that, with respect to legacies, the matter stood in this way. The first Act that imposed any duty at all was the 20 Geo. III., and that said, generally, that for every skin, or piece of vellum or parchment, or sheet or piece of paper upon which any receipt, or other discharge for any legacy left by any will or other testamentary instrument, or for any share, or part of a personal estate divided by force of the Statute of Distributions or the custom of any province shall be engrossed, so much shall be paid. It spoke of the word legacy, generally. Then when the 36 Geo. III. passed, that imposed a duty with reference to the value of the thing, to be calculated in a certain way; and the 11th section provided for the case where the benefit was given in such terms that the amount could only be ascertained, from time to time, by actual application; that was one case; "or, if the amount or value cannot, by reason of the form or manner of the gift, be so ascertained that the duty can be charged thereon under any other of the directions herein contained," alluding to distribution. But his Honour much doubted whether either portion of this section applied to a case where the whole thing must be taken *in solido,* at once, for the purpose of being applied in perpetuity, in some manner that might be such that no one individual would ever participate in the thing

itself, but have a benefit which resulted from the application of a large sum of money in some given manner, not consisting in the payment of money. Then, supposing that the term "Legacy," which was a general term, used in the first of the statutes, was to be taken as the thing descriptive of what was assessed to the duty in the subsequent statutes, clearly legacies generally were assessable. Then, for the purpose of assessment, it should be considered whether, if a residue was given, as the present was, for the purpose of founding a school, whether that being for the benefit of some portion of the human race, it does not strictly come within this last section, which says, "where any legacy shall be given for the benefit of a stranger in blood to the deceased;" for the benefit of all mankind; or all mankind to occupy a given portion of the empire. This legacy was for the foundation of a school, for the benefit of the Irish; and it did seem to his Honour that it was assessable; it was a legacy; it was for the benefit of persons, strangers in blood to the deceased; and moreover, it was so given that it did not fall within the 11th section of the 36 Geo. III., or within the reasoning of the learned Judges in the case *In re Wilkinson;* but it was given substantially in the same manner as if there was then existing a school for the benefit of these Irish poor people. It seemed to his Honour to be, in substance, the same thing whether the aggregate sum was then at once given for the foundation of a school *de novo*, or for the continuance of a school then in existence.

The last case to be referred to is *Re John Griffiths* (*p*), which was argued, by consent, before Mr. Baron *Parke*, upon a rule obtained against the executors for the purpose of taking the opinion of the Court.

The testator, *John Griffiths*, by his will bequeathed to certain trustees, two of whom were persons of the name of *Richard Benbow*, father and son, a sum of 4200*l.* Consols, upon the trusts, intents and purposes therein mentioned, *viz.*, as to 1700*l.*, upon trust to apply the dividends in establishing and supporting a daily school at Newtown, for the instruction in reading, writing, and ciphering, and in the church catechism, of twenty boys, between the ages of six and twelve years, inclusive, resident at Newtown, or the vicinity, whether parishioners or not; such school to be conducted on the same principle as a national school; and in the same manner as the schools attached to, or belonging to the established

(*p*) 14 M. & W. 510, 15 L. J. R. (N. S.) Exch. 130.

Church of England. And he stated it to be his will, that the dividends arising from a further sum of 400*l.* Consols should be paid by the trustees to, and applied by the schoolmaster, for the time being, in finding and providing the boys attending the school, and that mostly stood in need of the same, with pinafores down to the feet, and caps and shoes, and also with books and slates; subject to such boys leaving such clothes, books and slates behind them on their leaving school, or their going out to work. And as to the further sum of 400*l.* Consols, upon trust to apply the dividends in and for the purpose of providing a lodging-house, and bedding, at Newtown, or in the vicinity, for decent poor Welsh persons passing through the town, (other than certain persons named,) who should not have the means of providing a night's lodging. And as to the further sum of 700*l.* Consols, upon trust to apply the dividends in endowing and forming a national charity school at Llandinam, for the education of twenty boys and twenty girls. And as to the residue, in trust, after the deaths of certain persons, to whom he gave the same for life, to apply the dividends in establishing, endowing and supporting a daily national school at Llanidloes, for the instruction of fifty or sixty boys.

In the argument on the part of the Crown, besides the exemptions contained in the 39 Geo. III. c. 72, and 42 Geo. III. c. 99, s. 4, of specific legacies bequeathed to corporations and societies, and to Eton College from duty, that of the gift by the will of Mr. *Whitbread* of 8000*l.* for erecting and endowing a public hospital or infirmary in or near Bedford was alluded to; and, also, the general exemption in the 56 Geo. III. c. 56, (the Irish General Stamp Act) of legacies given "for the education and maintenance of poor children in Ireland, or to be applied in support of any public charitable institution in Ireland, or for any purpose merely charitable," which exemption the legislature had, by the Act assimilating the English and Irish stamp duties, (5 & 6 Vict. c. 82, s. 38,) repeated.

The following is a copy of Mr. Baron *Parke's* judgment, dated 10 July, 1845 (*q*).

This case was argued before me on the last day but one of the last term; and, by consent, I was to deliver my judgment after term.

The question is as to the liability to legacy duty of the two sums of 1700*l.* and 400*l.* bequeathed by the testator *John Griffiths* to

(*q*) When this portion of the work was written the case was not reported.

Richard Benbow and others, upon trust to pay and apply the dividends in establishing a school at Newtown for the instruction of twenty boys, with directions to pay such dividends to *Richard Benbow*, junior, who is appointed the schoolmaster; and 400*l.* is left to the trustees, the dividends to be paid to the schoolmaster for the purpose of supplying the scholars with pinafores, shoes and books.

The doubt as to the liability of these legacies to duty has arisen from the decision in this Court, *In re Wilkinson*, which is supposed to be at variance with a previous decision of the Vice-Chancellor of England, *Ex parte Franklin;* but which was confirmed by the Court of Exchequer Chamber in *Attorney General* v. *Nash*. Since then the subject has undergone further consideration by the Vice-Chancellor in the case of *Attorney General* v. *Fitzgerald*, and he held that money left to the trustees for the purpose of founding a school was a legacy to the trustees for the benefit of strangers in blood; not to the individuals partaking of the benefit of the charity, and was liable to legacy duty.

The case before me was fully argued by Mr. *Jervis* and Mr *Barstow*, for the legatees, and Mr. *Crompton* for the Crown. By the former it was likened to the case of *In re Wilkinson;* by the latter it was said closely to resemble that of the *Attorney General* v. *Fitzgerald*, both as to the 1700*l.* and the 400*l.*, which last sum is given for the benefit of the school, though applicable in a particular manner, and confined to one branch of its expenses.

I am satisfied that the argument for the Crown is right, and concur in the opinion of the Vice-Chancellor, that the legacies are liable to duty, in the same manner as if they had been bequeathed to the trustees of an existing school for the purposes therein mentioned.

The duties must, therefore, be paid on those and the other similar legacies: and the rule must be absolute.

It will be remarked that the Vice-Chancellor, in his judgment in *The Attorney General* v. *Fitzgerald*, cautiously avoided expressing any dissent from that of the Court of Exchequer *In re Wilkinson*, or that of the Court of Error in *The Attorney General* v. *Nash*, choosing, rather, to consider the case involved in them as distinguishable from the one before him, as well as from that of *Re Franklin*, previously disposed of by himself, upon the assumption that the Judges were correct in treating the bequest as an immediate gift to the objects of the testator's bounty, individually, and not as a charitable legacy. It is not to be wondered at that his Honour should feel much anxiety to prevent an apparent conflict

of opinion under such circumstances, more particularly where his views, which were favourable to the Crown, would be contrasted with those of a Court of Revenue, in a revenue matter. There can, however, be no distinction in principle between the cases; and there seems to be good reason for believing, that the Judges have seen fit to doubt whether they had taken a sufficiently comprehensive view of the subject, in reference to the question of charitable legacies.

Rent charge.

THE liability of a rent charge created by will to legacy duty was first questioned in *The Attorney General* v. *Jackson* (r), which was an information for recovery of the duty against *Randle Jackson* and *William Jackson*. The defendants pleaded that they did not owe the duty. The points arising out of the claim were argued on a special verdict.

The testator, *Samuel Jackson*, by his will devised certain real estates to the defendants and their heirs, to the use of *Charlotte Troughton* for her life, and after her decease, he declared that the defendants and their heirs should stand seised to the use and intent that *Joseph Troughton* should, during his life, receive, out of the same, an annuity or yearly rent charge of 500*l.*, clear of taxes, and without any deduction or abatement whatsoever, with such powers and remedies of distress and entry as are reserved to lessors for recovery of rents on leases for years; with a proviso for ceasing, in case the said *Joseph Troughton* should become bankrupt, &c. And from and after the decease of the said *Charlotte Troughton*, but subject to the said annuity, the testator declared that the said defendants, their heirs and assigns, should stand seised of the said hereditaments to the use of the sons and daughters of the said *Charlotte Troughton* in tail, as therein mentioned; and in default of such issue, then as to one moiety, to the use of the defendant, *R. Jackson*, his heirs and assigns for ever, and, as to the other, to the use of the defendant *W. Jackson* for life, with remainder to his sons and daughters, respectively, in tail; and in default of such issue, to the use that certain trustees, therein named, should receive an annuity of 600*l.*, and, subject thereto, to the use of the defendant *R. Jackson* in fee.

The questions for the Court were, whether the interest or benefit passing to *Joseph Troughton* was liable to legacy duty; and, if it was, whether the defendants were the parties liable, and whether they were liable upon this information, which charged them jointly;

(r) 2 Cro. & J. 101.

or, whether either and which of them was liable on the information, and the issues joined on the pleas thereto.

The judgment of the Court was delivered by Lord *Lyndhurst*, C. B.

It appeared to their Lordships that the clause in the will granting the annuity came precisely within the terms made use of by the legislature in the 45 Geo. III., a gift by way of annuity out of, or charged upon his or her real estate, and they could not, therefore, take upon themselves to say that the legislature did not intend that it should apply to a case of this description. As to the payment of the duty, the value of the annuity was to be estimated according to the tables in the 36 Geo. III. c. 52; the amount was to be paid by four quarterly [yearly] instalments, and it was obvious that the money to be paid in respect of the first instalment must fall greatly short of the sum which the annuitant would be entitled to receive in that year; the person, therefore, paying the annuity was never required to be in advance; and he was allowed to retain the duty out of the payment made to the annuitant. In this case the persons who were interested in the land were interested in moieties, one as tenant for life, the other in fee, but each moiety was liable to the annuity; under such circumstances their Lordships were of opinion, that both parties were jointly bound to pay the annuity; and that there could be no hardship on the tenant for life in being so liable, the duty not being required to be paid in advance.

The same point, as to the liability of a rent charge, was again raised in *Stowe* v. *Davenport* (*s*), and decided in the affirmative; but as the material question in that case was in reference to the execution of a power of appointment, the particulars will be stated in setting forth the cases upon that subject.

Shirley v. *Earl Ferrers* (*t*) may here be, properly, referred to.

The argument in this case came on upon a petition to remove a stop which had been put upon the funds in Court, to the income of which the petitioner was entitled for life, by means of the usual notice given by the Stamp Office to the Accountant General, of the claim for legacy duty.

Earl *Ferrers* devised his Leicestershire estates to trustees for a term of 500 years; and, subject thereto, to the use of other trustees during the life of *Catherine Shirley* the petitioner, (then

(*s*) Page 675, *post*.
(*t*) 1 Turn. & Phil. 167; 6 Jurist, 1047; 12 L. J. R. (N. S.) Chan. 111.

an infant, the reputed daughter of Viscount *Tamworth*, the testator's late son, and since married to the defendant, Duke *Sforza Cesarini*,) to preserve contingent remainders, with remainder to the use of the sons and daughters of *Catherine Shirley*, with remainder over. The testator directed the trustees of the term, out of the rents and profits, to pay certain annuities, to keep a certain mansion house in repair, to pay the rent, &c., of another house, and, in aid of other funds therein provided, to apply so much of the rents and profits, not exceeding in the whole, in any one year, (including such rent, &c.,) 2000*l.*, as the trustees should think fit, in the clothing, maintenance and education of the said *Catherine Shirley;* and to invest and accumulate the interest of the surplus until she should attain twenty-one, or marry; and, upon the happening of either of those events, to stand possessed of the accumulations, upon such trusts, and for such purposes as she should appoint; and, in default of appointment, in trust for her, absolutely; provided, that if she died under twenty-one, without having been married, then to stand possessed of the funds on trusts corresponding, as nearly as might be, to the uses before limited of the Leicestershire estates; and after she should have attained twenty-one, or married, the trustees were, during her lifetime, to pay the surplus rents, after answering the annuities, to her, for her separate use.

There were no surplus rents; and the claim for legacy duty was on so much of the rents and profits as had been applied for maintenance, as a partial benefit or interest, out of real estate, given to *Catherine Shirley;* but the Lord Chancellor considered that instead of the gift of a benefit, it was, rather, a restriction upon the trustees as to the sum to be applied for a maintenance; the infant would be entitled to maintenance out of the rents and profits. It was true, the trustees had a discretion to allow a portion of the rents, not exceeding a certain sum, for that purpose; but still, the estate, out of which the allowance was to come, was her own estate. Nothing but what was a charge upon the estate of another person would come within the statute. It was very important that, as far as possible, refinements in the construction of the Act should be avoided. His Lordship was of opinion, that no legacy duty was payable, and that the stop should be taken off (*u*).

(*u*) See *Swabey* v. *Swabey*, *post*, as to money belonging to a testator charged on his own real estate.

Money from sale of real estate.

AS to money to arise from the sale of real estate.

The first case, *In re Evans* (*x*), was discussed on a rule obtained against the trustees under the 42 Geo. III. c. 99.

The testator, *John Evans*, by his will gave and devised all his freehold, copyhold, and leasehold estates to his sister and two brothers, in trust for themselves and their respective children, in undivided third parts, as therein mentioned; and in the will was contained the following power, *viz.*—"Provided also, and I do hereby further declare and direct, that notwithstanding any of the trusts and directions hereinbefore contained, touching my freehold and copyhold estates, it shall be lawful for the trustees or trustee thereof, for the time being, to sell the same or any part thereof, by public sale or private contract, either together or in parcels, or to make or agree to any exchange or partition thereof, either together or in parcels, or of any part thereof, as shall appear most expedient to my trustees or trustee for the time being, towards effecting the management of my property and affairs." The testator died in January, 1823, and the trustees considering certain parts of the real estate eligible for building on, and that it would be beneficial to the parties interested that the same should be sold, they, in the month of April after the testator's death, sold such parts of the real estate to the amount of nearly 3000*l.* The remainder was held by the trustees till Michaelmas, 1834, when, in pursuance of an order of the Court of Chancery, the whole was sold.

It was admitted in this case that the word "direct" was not essential to constitute a direction to sell, within the meaning of the Act, but that if a clear intention could be collected from the will it was sufficient; Lord *Lyndhurst* observing, that the question was, whether there was such an obvious intention, and such a necessity for a sale, to effectuate the purposes of the will, as that a sale could be said to be directed.

The judgment was delivered by Mr. Baron *Bolland*. The first sale was made, not because it was necessary for the purposes of the trust, but because it was beneficial to the parties, and under such circumstances the Court was of opinion that it was not a sale of property *directed* to be sold, within the meaning of the Act. The second sale, made under the order of the Court of Chancery, after a report of the Master that it would be for the benefit of the parties interested that the property should be sold, was, likewise,

(*x*) 2 C. M. & R. 206.

not a sale to be considered as directed by the testator, within the same Act.

The next case was *The Attorney General* v. *Mangles* (*y*). The testator, *John Christie*, by his will devised to trustees the residue of his estates, real and personal, upon trust, at such times as they might think convenient, to sell, convey, or otherwise convert into money the same or *any part thereof*. And he directed that the clear proceeds should be applied as therein mentioned for the benefit of his wife and children. And, in a subsequent part of his will, he further directed that his trustees should have full power, in making such sales as in the said will were *directed*, to resort to either public or private sale, and to buy in at such public sale, and re-sell; and should also have the discretion *to defer any sale so long as they might think fit;* and of causing *any part or parts of the real or personal estates to be valued, instead of being sold, and of allotting such parts to any or either of his children, at the amount of the valuation*, as a part of his or her proportion of the said testator's residuary estate, but to be *considered as personal estate*. And in case of any such allotments the trustees should have discretionary powers of leasing and managing such respective allotments during the minorities of the children, and the like powers as to all the testator's freehold and leasehold properties, *until the same should be sold*.

The greater part of the real estate was sold, but a portion was valued and allotted to the sons; and this information was filed for the recovery of legacy duty on the whole (*z*).

During the argument, the Court expressed a strong opinion that the legacy duty attached to the property sold, and the point was given up by the counsel for the defendants (*Wightman*), who would not argue against the opinion of the Court; and the question was confined to the allotted property. The Court gave judgment against the Crown on this point.

Lord *Abinger*, C. B.—It is admitted on all hands, that for that portion of the estate which was sold under the direction of the will the legacy duty is payable. The question as to the remainder appears to me to turn upon a very narrow ground; which is, whether the trustees had a discretion or not. Now the argument of the Solicitor General amounts to this: that certain cases may occur

(*y*) 5 M. & W. 120; 3 Jur. 1981.

(*z*) See *The Attorney General* v. *Holford*, page 668, *post*, as to charging the duty when the real estate is not sold.

in which it would be extremely difficult to exercise that discretion; but I think we are not to judge by that very nice disquisition of cases which may possibly occur. The trustees certainly have a discretion, which they may exercise, and exercise within the intention of the testator in many cases. It appears to me that that discretion distinguishes this from the case decided, where there was no such discretion (*a*). Cases may equally be put, where it would be highly probable that they would exercise a discretion not to sell. Having that discretion I think we cannot consider that before they had exercised a discretion to sell, and so to convert the estate into personalty, the legacy duty attached. I think, therefore, the judgment must be against the Crown.

Parke, B.—The Crown is clearly entitled to the legacy duty on the part of the estate which is sold; the remaining question is whether, taking all the will together, this is a direction to the trustees to convert the estate into money; or whether it is really left in their discretion not to convert it into money, but to leave it as land? According to the authority of *The Advocate General* v. *Ramsay's Trustees* (*b*) the words of discretion may be so controlled as to show that they are directory. If they are directory the legacy duty would attach under the Act. The question here is whether they are directory or not? It seems to me that a discretion is clearly given to the trustees not to sell in certain cases, the will provides that they may have full power of making such sale, and to resort to a public or private sale; it gives them a power of re-selling, or of deferring any sale; and of causing any part of the testator's real or personal estate to be valued, not *before* sold, but *instead* of being sold. I admit there may be some difficulty in what follows, that it shall be treated as personal estate, and subject to all the trusts of the will; that may make it difficult in some cases for the trustees to comply with the directions given in this part of the will; at the same time I cannot think that that affects their discretion in certain cases to sell or not to sell, as they think fit: and if they think fit not to sell, inasmuch as they have a discretion to sell or not, the legacy duty does not attach.

Alderson, B.—It is clear, according to the case of *The Advocate General* v. *Ramsay's Trustees*, that if there be words of discretion

(*a*) Reporter's note: "Probably referring to *The Attorney General* v. *Holford*."

(*b*) The next case.

they may be controlled by the other words of the will, so as to show that they are only in semblance words of *discretion*, and in reality words of *direction*. But it does not appear that the words of this will are of the latter description. In the simple and plain sense they are words of discretion; and although, as the Solicitor General argues, it would be difficult to carry that discretion into effect in certain ingenious cases which he has put, to which I agree, yet it is possible to conceive that those ingenious cases may never occur at all. The testator might mean to give a discretion, for the purpose of enabling the trustees, in case they saw the possibility of such a case arising, to sell in order to get rid of the difficulty; but in case the circumstances and time were such as were not likely to raise that difficulty, then to take the other branch of the alternative, and allot the real estate. Unless you can show that, *at all events*, the discretion is taken away, it does not come within the authority of *The Advocate General* v. *Ramsay's Trustees*. It seems to me that many cases might be put in which it would be obviously the duty of the trustees, in the exercise of a sound discretion, to allot this as land. If that be so, the words of the will are to have their natural import and effect; that is to say, the words of discretion shall mean that the trustees have a discretionary power. Then it is quite clear the legacy duty is not to attach.

The case of *The Advocate General v. Ramsay's Trustees* (*c*), referred to in the last case, had been decided in the Court of Exchequer in Scotland. The question was, whether the produce of real property sold, under the testamentary trust dispositions and settlements of the testator, *Andrew Ramsay*, was liable to legacy duty, under the same law as if the case had arisen on a devise in England. The Lord Chief Baron (Sir *Samuel Shepherd*), who delivered the judgment of the Court, observed, "When one considers the intention of the Acts, it is, that everything which comes, or is directed to come into the hands of the donee in the shape of a money gift, or bequest, should pay the tax." The argument, as further noticed by his Lordship, against the duty was, that there was said to be an alternative, that the trustees had power to sell, or not to sell but distribute the residue *in specie;* that they had an option, and that it was not a direction. His Lordship would not say how it would be if an option, merely, was given; he had formed a strong opinion upon that question; but it was not necessary to

(*c*) 2 C. M. & R. 224.

state it, because, in the present case, he did not conceive that the trustees had an option not to convert. His Lordship then went into the case to show, that although there was no express direction to sell, a conversion was in the mind of the testator; that the power given to the trustees to sell was equivalent to "empower and direct," and that if the trustees had not sold, and divided the money, they would not have complied with the will.

The only other case upon the point is that of *The Attorney General* v. *Sincox* (*d*), which was argued on a special verdict in a proceeding by information in the Exchequer for legacy duties on the produce of the real estates which had been sold by the trustees.

The testator *Joseph Bissell* by his will dated the 13th June, 1816, after making certain bequests, gave the residue of his personal estate (other than leasehold) to trustees, upon trust, as soon as convenient after his decease, to sell and dispose of such parts thereof as should not consist of money or securities, and place out the produce thereof, and other moneys collected, in government or on freehold or leasehold securities, or other securities therein mentioned, and apply the interest as therein directed; and after devising and disposing of certain freehold and leasehold property, he gave a certain freehold house and some land in Birmingham to *Ann Shaw* for her life, and certain other freehold and leasehold property to his brother *Richard* for his life, and after their deaths, respectively, he gave the same to his trustees for the purposes after mentioned; and he devised certain other freehold houses and parts of houses, and all other his real estate to his said trustees, upon the trusts therein mentioned; that is to say, upon trust to apply a portion of the rents to certain purposes specified, and pay the residue to his brothers and sister, *John Bissell*, *Benj. Bissell*, and *Mary Fisher*, for their lives, and the lives and life of the survivors and survivor, and after the decease of the survivor, to convey and assign the said freehold messuages, &c., to all his the testator's nephews and nieces (children of his brothers and sister) which should be living at the time of his death, in equal proportions, as nearly as they could make partition of the same, in severalty. And that in the mean time, and until such conveyances, assignments and partition should be made, to pay the rents unto his nephews and nieces in proportion to the shares and interest they would take in case such partition had been completed. And the testator declared his will to be, that for the purpose of such division and partition it should be law-

(*d*) 1 W. H. & G. 749; 18 L. J. R. (N. S.) Exch. 61.

ful for, and he did thereby authorize and empower his said trustees, from time to time to sell and dispose of all or any part or parts of the said freehold messuages, &c., either by public sale or private contract, and entirely, or in parcels, for the most money that could be obtained for the same, and at the expense of the said trust estate, and to employ one or more surveyors and appraisers for the purpose of ascertaining the value thereof, and to prepare and deliver abstracts of title, and enter into, make and execute such contracts, agreements, deeds, conveyances, and assurances as should be necessary for the due execution of the said trust. And he further willed and declared that the said trustees should, in case the whole of the said freehold property should be sold for the purposes aforesaid, stand and be possessed of the moneys to arise from the sale, and from the rents in the mean time, upon trust for the same persons, in the same shares and proportions, manner and form as in the said will is mentioned and declared of and concerning the residue of the testator's personal estate; which said last mentioned trusts were, for his said brothers and sister for their lives as aforesaid, and, after the decease of the survivor, for all his said nephews and nieces which should be living at the time of his decease in equal proportions. And he further directed that in case any part or parts, but not the whole of his estates and premises should be sold for the purpose aforesaid, then that the trustees should stand possessed of the money to arise from such last mentioned sale, and from the rents in the mean time, upon trust to pay and apply the same to and amongst his said nephews and nieces, not taking any or their full shares of the freehold and leasehold messuages, &c., *in specie*, in just proportions, for equality of partition.

The testator left ten nephews and nieces; and the trustees, after the death of the last survivor of his brothers and sister, at different times, in pursuance of the authority and power by the said will given, for the purpose of dividing and making partition of the property, sold all the said freehold messuages, &c.; and the question was, whether the produce was liable to legacy duty.

The Court having taken time to consider, judgment was delivered by the Lord Chief Baron. His Lordship, after stating the facts, referred to the two cases of *In re Evans*, and *The Attorney General* v. *Mangles*, and observed, that if the former was to be taken as an authority, that duty did not attach where a testator did not imperatively direct a sale at all events, but only authorized his trustees to sell in case they should deem it expedient so to do, it was impossible to reconcile it with the subsequent decision in *The*

Attorney General v. *Mangles.* In this conflict, or apparent conflict of authorities, the principle of the decisions must be regarded. There was nothing in the language of the statute which, in terms, confined its operation to cases where the direction to sell was absolute. If a testator should direct his land to be sold, and the money to be divided, on any given contingency; as, in case his property should be under a certain value, or in case his eldest son should succeed to a family estate, or in case *A. B.* should concur, or should think a sale to be for the benefit of the testator's children, then, on any of these events happening, the direction would be absolute, and duty would attach. It could make no difference that *A. B.* was, himself, the trustee for sale; and it followed that in case of a devise to trustees to sell if they should think it expedient, and for the interest of the *cestui que trust* so to do, duty would attach if they should think it expedient, and did, therefore, sell. In the present case the lands were devised to trustees on trusts which may be fairly construed to mean, that the trustees were to retain the estates, unsold, and to allot them, if they thought that to be for the benefit of the objects of the testator's bounty; or, on the other hand, to sell and distribute the money if that appeared to them most expedient. The trustees, by selling, had shown, conclusively, that they did think the most expedient course was to sell; and so, in the event, there was a direction to sell. Even, therefore, if there was no authority to guide them, the Court would have thought that duty attached; but, in truth, the case was governed by *The Attorney General* v. *Mangles*, which was, in principle, the same as the present; except that that was a direction to sell, with a power to allot, instead. The only difficulty the Court had felt had arisen from the decision in *Re Evans*; but the precise ground on which the Court, in that case, formed its opinion, did not, clearly, appear. Possibly the Court might have thought, that the circumstance of the proceeds being directed to be invested on securities, upon the same trusts as attached on the lands sold, still left the character of real estate impressed upon the money; and that, therefore, the statute, which imposed duty only where the proceeds were given to legatees, did not apply. It was not necessary to give any opinion as to the validity of such a distinction, it was sufficient to say that if the case was to be taken as an authority for the general proposition, that duty did not attach in any case where the sale was made under a discretion to sell and distribute the proceeds, but without any positive direction imposing the obligation of selling, the case

was clearly overruled by *The Attorney General* v. *Mangles*, and was, as the Court conceived, contrary to any fair and reasonable construction of the statute. For these reasons judgment was given for the Crown.

Some strictures have been made upon this judgment, but, the writer thinks, with injustice. The Court did not say that the authorities were, really, conflicting; and upon a careful analysis and collation of them it does not appear that they are so. The question in all of them was, whether there was a direction to sell within the statute, according to the true and proper construction of it. In the case *In re Evans* there was no positive direction, (which was held not to be, in terms, necessary,) but only a power to sell; and it must be admitted that a sale of devised estates might take place without any regard to a power in the will, or to the will at all; and it will be perceived that the judgment, pursuing the remark of Lord *Lyndhurst* as to the obvious *intention* of the testator, *and a necessity* for a sale, refers to the *circumstances* under which the sales took place, and states that "under such circumstances" the Court was of opinion that they were not *sales* of property *directed* to be sold, within the meaning of the Act. It is clear, therefore, that according to the view the Court took of the Act, and of the will, there might have been a sale which would have converted the mere power into an absolute direction; whether the Court was correct or not, in treating the sales as not having such effect, is quite another matter.

The writer, with deference, observes that he thinks too much has been said respecting the doctrine of conversion. He does not admit that the question is to be governed, if it is to be at all affected by it. It is true that reference has been made to it in cases decided under the same clause in the Act, rather, however, by way of analogical reasoning than otherwise. But with whatever object mention has been made of it by any of the Judges, it was not as showing that it controlled the point. The question is not whether, having regard to particular rules of Courts of equity, real estate is to be deemed, for the purposes of succession, personal estate, by reference to what is termed a conversion out and out, but whether there is a gift of money to arise from the sale of land directed by the will to be sold within the meaning of the Act. Lord *Cottenham* in remarking, in *Williamson* v. *The Advocate General* (*e*), that the criterion was, whether the trust amounted to

(*e*) *Post*, page 669.

a conversion out and out into personalty, merely intended to contrast such a general and absolute conversion with a limited one, for the purpose of paying off certain charges, debts, and so on; and any suggestion that the learned Barons, who decided the case of *The Attorney General* v. *Mangles*, had forgotten all that they might have learned on the equity side of their Court, would seem to be made without reason. That the doctrine alluded to is to be so applied as to effect a charge of probate duty was repudiated by the Court in the cases of *Custance* v. *Bradshaw*, and *Matson* v. *Swift* (*f*). All that the Court of Exchequer determined in *The Attorney General* v. *Simcox* is, that a direction to sell upon a contingency becomes, when the contingency happens, absolute within the meaning of the statute; which is consistent with the decision of the House of Lords in *Williamson* v. *The Advocate General*, that the direction to sell was absolute on the testator's leaving no issue; and with that in *Re Cholmondeley* (*g*), where the Court held that the power to appoint given to the deceased, in the event of her dying without issue, became general and absolute on that event happening; and which is, what the Court, in effect, determined in the case of *Re Evans*.

If there be no sale of land directed to be sold, the duty is still payable.

Previously to any of the foregoing cases, relating to the sale of land, it had been decided, that where real estate is directed by will to be sold, the legacy duty is payable notwithstanding no sale takes place. This was held in *The Attorney General* v. *Holford* (*h*), which was an information against the devisee for the recovery of the duty; a verdict was taken for the Crown, subject to the opinion of the Court on the following case.

The testator, *George Bogg*, by his will gave, devised, and bequeathed to *John Josiah Holford* and *John Richard Baker*, and to the survivor, and the heirs of the survivor, all his estate, freehold, leasehold, or otherwise denominated, consisting of a share called a King's share in the *New River Water-works*, purchased of *W. C. Keating*, Esq. with the land tax thereon by him redeemed; upon trust, as soon as possible after his decease, to sell the same by public auction; and he willed that the profits arising therefrom should be deemed part of the residue of his estate, thereinafter disposed of, or go in aid, if necessary, of the rest of his property, in discharge of his pecuniary legacies either by his will or any codicil thereto. The share in the Water-works was freehold pro-

(*f*) *Ante*, pp. 610, 613. (*g*) *Post*, page 681.
(*h*) 1 Price, 427.

perty, which the testator held in fee simple. After giving various legacies he gave the residue of his property to *John Josiah Holford*, his heirs, executors, administrators and assigns for ever. The executors were enabled to pay all the debts and legacies out of the personal estate, without having recourse to a sale of the New River share, which was of the value of 5000*l.*, of which the said *John Josiah Holford* (who was also one of the executors) was possessed as part of the residue of the estate, without any duty having been paid for the same. The question was, whether the legacy duty, granted by the 48 Geo. III. c. 149, should not be paid by the defendant upon such share.

Chief Baron *Thomson* delivered judgment as follows, *viz*:—"This is not a bequest of the property in question, directing it to be sold with the view, solely, to the payment of debts, but it is directed to be sold in all events, and to be turned into money. The profits arising therefrom were, by the will, to go in aid of the rest of his property, if necessary, in discharge of his pecuniary legacies; but it is not directed to be sold for that purpose merely, but generally to be sold, and the money to go as residue of his personal estate. Now all the residue of the testator's estate goes to *Holford*, the defendant, a stranger in blood; and this property would be considered in equity as sold, although it might not be, in fact, sold; and supposing him to have died before election it would have gone to his personal representatives; and shall it be said that by not selling it, according to the directions of the will, he shall be enabled to intercept the duty? He has, it is true, a right to take it in its original state, as between himself and the executors; but he must not, by so doing, be permitted to evade the duty to which, if sold, it would have been liable; and it must be considered as having been actually sold by the executors, and that the money arising from the sale had been by them paid over to the devisee.

"It appears to the Court, therefore, that this bequest is within the 48 Geo. III., and that the duty is payable by the defendant according to the information, and we must confirm the judgment for the Crown."

The decision in *Williamson* v. *The Advocate General* (*t*), in the House of Lords, on a writ of error from the Court of Exchequer in Scotland, was to the same effect. An information was filed in that Court for legacy duty on certain real estates, of considerable value,

(*t*) 10 Clark & Fin. 1.

directed to be sold, as it was contended, by testamentary instruments; but which had not been sold, but had been taken possession of by the plaintiff in error, who was entitled to the proceeds; the question being, whether, taking the instruments together, there was such a direction to sell as would make the estates liable to legacy duty, a sale not having taken place. Both tribunals held that there was an intention, and, therefore, a direction to sell, and that the duty was payable.

Money to be laid out in real estate.

It will be seen by the 36 Geo. III. c. 52, s. 19, that money given by will to be laid out in the purchase of real estate, not to be enjoyed by different persons in succession, is to be charged, at once, with duty, as personal estate. But if it is so to be enjoyed in succession, then, until land is purchased, duty is to be paid on the money, in respect of each person's interest therein, in succession, by way of annuity; provided that if, before it is laid out in land, any person becomes entitled to an estate of inheritance, in possession, in the land to be purchased, duty is to be paid on the fund, as on an absolute gift of personal estate to such person. Sir *Gilbert East*, by his singular will, gave a large amount of Bank and other stock to his wife for life, and, after her death, he directed his executors and trustees, within eighteen months, to lay out such funds, together with all dividends that might accrue previously to the investment, in the purchase of real estate to be enjoyed by various persons, designated by letters, in succession, provided they, within a period mentioned, themselves, respectively, complied with certain conditions imposed by the will. The funds were all duly invested by the surviving executor in the purchase of land, which was conveyed to him upon the trusts of the will. The Commissioners of Stamps and Taxes claimed legacy duty upon the property, on the ground that the person first taking became entitled to an estate of inheritance, (tail male,) in possession, in the land to be purchased; but the question was, whether he took an estate for life, or in tail; and this point it was agreed should be decided by means of a special verdict, upon an information against the executor. The Court on arguing the special verdict was of opinion that he took an estate tail. But it was also contended that no duty was payable, because the person taking the first estate had no interest, whatever, in the property until the land was purchased, and, unless he, himself, within the prescribed period, complied with the requisites of the will; and that therefore the case was not within the proviso contained in the 19th section of the statute. But the Court

considered that there could not be the smallest doubt, as to the meaning of the Act, and held that the proviso embraced the present case.

By whom the duty is payable where money is to be laid out in land.

It was further contended that the defendant was not the person liable for the duty, by reason of the peculiar wording of the 19th clause, which enacts that *each person*, in succession, entitled to the enjoyment of the fund, *shall pay* the duty chargeable on his estate or interest therein. This interpretation, however, is erroneous; and is contrary to the tenor and obvious intention of the Act, which is consistently framed throughout, with a due regard to the security of the revenue. The peculiar mode of expression adopted in this instance arises from the peculiarity of the nature of the enactment, and is used as a means of conveniently designating, not the party who shall be personally answerable for the duty, but the person who shall ultimately bear the burden of it; still leaving the general provision, contained in the 6th section, to operate in respect of this class of bequests as well as others. Of this opinion was the Court. But as the point has been before alluded to, and as it is one of some importance in collecting the duty, the writer takes occasion to say a few words upon the subject, with the view of showing that this is the proper construction to be put upon the language made use of in the clause in question.

It will be observed that the duty is charged upon the legacy itself, which legacy is, in all cases, under this Act, personal estate, and can only be realized through the medium of the executor or trustee.

Sect. 6 enacts that in all cases, *where not otherwise provided*, the executor shall pay the duty upon retainer, or payment of the legacy, and that it shall be a debt due from him to the Crown; and that it shall be a debt due from the legatee, also, if the legacy be paid to him without deducting the duty.

Sect. 12 provides for the mode of paying duty on legacies given to be enjoyed in succession. It enacts that where it is given to persons in succession, all chargeable at one and the same rate, the duty shall be charged upon, and paid out of the legacy, at once; that where it is given to be enjoyed by persons chargeable with different rates, those who are entitled for life shall be *chargeable* as if the annual produce had been given by way of annuity; and that they shall be *chargeable* when they begin to receive such produce; and that any person becoming absolutely entitled shall, when and as he shall receive the same, or begin to enjoy the benefit of it, be

chargeable with and *pay* the duty as if it had come to him immediately on the death of the testator.

Sect. 13, which is important, directs that the duty payable on any legacy to be enjoyed, in succession, by persons upon whom the duty is *chargeable* at one rate, shall be *deducted and paid by the executor,* upon payment of the legacy to the trustee, if any; but if there be no trustee, then that it shall be *deducted* out of the capital, upon receipt, by any person, of any produce of such capital; and where the duty is chargeable at different rates, then the executor is to be chargeable with the same in succession, as he would be in case of immediate bequest, unless the property has been paid to or vested in a trustee, in which case the trustee is to be chargeable, in the same manner as if he had taken the burden of the execution of the will.

Sect. 16 enacts that where any legacy or residue shall be given to persons in joint tenancy some of whom shall be *chargeable* with duty, and some not, *the persons chargeable shall pay* in proportion to their interests, respectively, &c.

Sect. 17 relates to legacies given subject to contingencies; and sect. 18 to legacies subjected to powers of appointment, in both of which the legatees are spoken of as persons to be *charged* with duty.

Sect. 20 enacts that estates *pur autre vie* applicable by law in the same manner as personal estate, shall be *chargeable* with duties as personal estate.

In these various clauses, when reference is made to the mode of charging the duty, in respect of the interests of different legatees, such duty is spoken of as *charged* or *chargeable,* sometimes upon the legacy itself, and sometimes upon the party, just as it was most convenient, according to the construction of the sentence, to point out the particular interest by which it was to be borne, and the manner of charging it; and in one instance (sect. 12) the language is, that the person becoming entitled shall be "chargeable with and pay" the duty. But in all these cases, of persons entitled in succession, it is provided (sect. 13) that the person by whom the duty shall be immediately paid to the revenue shall be the executor or the trustee. Referring again to the clause (19) respecting which the doubt has been suggested, it will be found that no distinction is to be made, in paying the duties, between the cases there provided for and others, where the legacy is to be enjoyed in succession, it being expressly directed that each person in succession shall pay

duty "in the same manner as if it had not been directed to be applied in the purchase of real estate;" and in the proviso, in the same clause, in case any person shall be entitled to an estate of inheritance in possession in the land to be purchased, before the money shall have been applied, it is declared that the same duty which "ought to be paid by such person," if absolutely entitled thereto, as personal estate, by virtue of any bequest thereof, as such, shall be *charged* on such person, and *raised* and *paid out of the fund* remaining to be applied.

This latter provision, as well as the whole state of circumstances, will show, at once, that the person to pay the duty must, of necessity, be the executor, or trustee. When the whole of the money is paid to the legatee, the fund cannot be said any longer to exist; it has been appropriated; it is only a fund when in the hands of the person who holds it for the purposes of the trust; when once paid or distributed it is gone, and no claim upon it can be afterwards "raised and paid" out of it. Moreover, the proviso, assuming that some of the money might have been laid out in land, states that the duty shall be raised and paid out of the fund "remaining to be applied;" that is, of course, paid by the executor or trustee out of the money left in his hands. It will be observed that duty ceases to be payable from the time the money is laid out; it is only whilst it remains *in specie* with the executor or trustee, that duty is charged; which duty is, in fact, part of the gift itself, and, when the latter is free of duty, is an augmentation of it; and it must be administered by the executor, the portion belonging to the Crown the legatee having no business, whatever, with. It is very probable, indeed, that during the whole period whilst the fund is in the hands of the executor, or the trustee, the income may belong to infants, and may be applied for their benefit, in which case he is the only person upon whom it can probably devolve to pay the duty.

Further; suppose personal property given to be enjoyed in succession, *with power* to the executor or trustee if, or when he shall think proper, to lay it out in real estate; the clause in question must, in such a case, have the same application, as in that of money *directed* to be laid out in real estate; and the duty will cease to be payable when the money is so applied; but the executor or trustee is, clearly, in the mean while, within the express provisions of the Act as to the payment of the duty; and it must be apparent that there can be no distinction, either in principle or practice, in this respect, between the two cases. And there, certainly, can be none,

in principle, between the case of personal estate given, *with power* to lay it out in land, and that of personal estate *directed* to be laid out in land, but *with power* not so to apply it.

It may, however, be thought necessary to explain why the 6th section, charging the executor with the payment of the duty, contains the exception, "where not otherwise provided for."

To do this it will be necessary to point only to the 14th sect., which provides that no duty shall be paid on articles not yielding income, whilst the same is enjoyed in succession, but that if the same shall be sold, or they come to a person having power to sell them, or having an absolute interest therein, the duty shall then be chargeable, and shall be paid *by the person* for whose benefit they shall be sold, or having power to sell them, or having an absolute interest therein, and shall be a debt of such person, *but shall not be a charge on any person by reason of his having assented to such bequest*, as executor, &c.

It is considered that sufficient has been said to show, not only that there exists no reason why any exception should be made, as to the obligation on the executor or trustee to pay the duty accruing under the 19th section, where money is to be laid out in land, but that, in fact, there is no such exception; that the direction contained in sect. 13, requiring the executor or trustee to pay the duty, refers as well to one case as the other; and that if this be not so, instances may arise where the duty cannot be collected (*j*).

Power of appointment.

IN submitting the cases upon the question as to the liability to duty on the execution of a power of appointment, it will be necessary to have regard to the particular enactments relating to it, as well as to the general law. Where, without reference to any special enactment, legacy duty is charged in the case of an appointment, it can only be where the original instrument creating the power is a will, under which, according to the rule of law, the appointee takes. But in the cases specially provided for, the duty will attach although such instrument be not a will.

Whether a patent is heritable or moveable estate in Scotland.

Accumulations.

(*j*) A case recently decided in the Exchequer, in Scotland (*Adv. Gen.* v. *Oswald*), may be mentioned here. An information was filed and a special verdict found for the purpose of obtaining a judicial opinion whether a patent right was heritable or moveable estate in Scotland (a point never determined); and also whether the accumulations, consisting chiefly of sums recovered by the trustees in actions against persons for infringing the patent, were chargeable with duty. The testator by his will gave the patent right to trustees, with directions to accumulate the profits until the period of the expiration of the patent, and then to divide the fund amongst certain persons. The Court held that the patent was moveable estate, and not heritable; and that duty was payable in respect of all the accretions.

The first of the provisions is that of the 36 Geo. III. c. 52, s. 7, which, in defining a legacy within the meaning of the Act, enacted, amongst other things, that a gift, by will, out of personal estate which the deceased had power to dispose of as he should think fit, should be deemed a legacy. The next is that of the 45 Geo. III. c. 28, s. 4, which provided not only that a gift by will out of personal estate which the party so had power to dispose of should be deemed a legacy, but also a gift charged upon or made payable out of real estate which he had power to dispose of. The last provision upon the same point is the recent one of the 8 & 9 Vict. c. 76, s. 4, which embodies and extends both the previous enactments. Besides these there is the 18th section of the 36 Geo. III. c. 52, of which mention will be made in reference to the case of *Platt* v. *Routh*.

Power to appoint a rent charge.

The first case upon the execution of a power was that of *Stow* v. *Davenport* (*k*), which can scarcely be said to have given rise to a question on any point having reference to the power; although no less than four several questions were involved in it, *viz.*:—

First,—Whether a rent charge was a legacy; reviving the question in *The Attorney General* v. *Jackson* (*l*).

Secondly,—If it was, then, whether the legacy, in this instance, was, as regards the annuitant, free from duty.

Thirdly,—If it was free from duty, whether the plaintiff, the owner of the land, was obliged to pay the duty.

Fourthly,—Supposing him to be compelled to pay the duty, whether, having paid it, he could recover it, (as he sought to do by the action), from the annuitant, leaving the latter to seek his remedy over again against the executors.

The testator, *Thomas Frisby*, by his will devised his real estates to be conveyed to the use of his son *T. F.* for life, &c., and after his death, in case his wife should survive, to the use that she should take from the estates such annuity or yearly rent charge, not exceeding 500*l.* a year, for her life, as *T. F.* should by will appoint; the same annuity to be paid her *clear of all taxes and deductions* whatsoever; remainder, (in default of issue of *T. F.*, which happened,) to the plaintiff for life, charged with the annuity. After the testator's death *T. F.* and the plaintiff joined in a conveyance of the land to a trustee, in trust for *T. F.* for life, and to the use that after his decease, his said wife, if she should survive, might receive, out of the same premises, such annuity or yearly rent charge, not

(*k*) 5 B. & Ad. 359; 2 N. & M. 805.

(*l*) Page 657, *ante*.

exceeding 500*l.* a year, clear of all taxes and deductions whatsoever, as *T. F.* should by will appoint. *T. F.* by his will appointed the full annuity of 500*l.*; and on his death the plaintiff entered into possession, paying the annuity. An information having been filed by the Attorney General against the plaintiff, the latter was obliged to pay the legacy duty on the annuity; and he brought this action for the recovery of it against the defendant, who had married the annuitant. A verdict was entered for the plaintiff, subject to the opinion of the Court on a special case.

It was sought to review the case of *The Attorney General* v. *Jackson;* but after an intimation from the Bench, tending to show the Judges' concurrence in that decision, and that the two cases could not be distinguished, the point was abandoned.

The Court in giving judgment said that the decision in *The Attorney General* v. *Jackson* appeared to be correct. That it followed, from the 36 Geo. III. c. 52, s. 6, and the 45 Geo. III. c. 28, s. 5, that the plaintiff, who was in possession of the lands, was compellable to pay the legacy duty; and, from the case of *Hales* v. *Freeman* (*m*), that he might recover the amount so paid, if the annuitant were chargeable. That a second point was made, that the annuity was devised *clear of all taxes and deductions,* and that the annuitant was entitled to have it without any deduction of the legacy duty. They were of opinion that the testator meant that no tax, of any description, should reduce the amount to be paid to the legatee; and that the land was subject both to the annuity and the tax. That judgment, therefore, must be for the defendant.

The Attorney General v. *Pickard* (*n*) and *Pickard* v. *The Attorney General* (*o*) was the case of an information for legacy duty on a rent charge, under the will of *John Trenchard,* to which the defendant demurred; and judgment on the demurrer having been given for the Crown, a writ of error was brought in the Exchequer Chamber.

John Trenchard by his will devised certain real estates to trustees, to the use of *Wm. Trenchard* for his life, with remainders to his sons in tail, with remainder to *Thomas Pickard* for life, and to his sons in tail, with remainder to the defendant the Rev. *Geo. Pickard* for his life, with the like and other remainders over. He devised other estates also to *Thos. Pickard* and *Geo. Pickard* respectively, for life, and their respective sons, in tail, in like manner, with re-

(*m*) 1 B. & B. 391.

(*n*) 3 M. & W. 552; H. & H. 174.

(*o*) 6 M. & W. 348.

mainders over. And he provided and declared that it should be lawful for the several persons who, for the time being, should, by virtue of any of the limitations thereinbefore contained, be in the actual possession, or entitled to the rents, issues and profits of the said premises, by any deeds or instruments in writing, or by their last wills and testaments, to grant, limit or appoint unto any women with whom they should, respectively, have been married, for the life or lives of such women, and for their jointures, respectively, any annual sums or yearly rent charges, not exceeding the sum therein mentioned, *viz.*: as to the lands first devised, not exceeding 250*l.*, and, as to the others, not exceeding 500*l.*; such annual sums or yearly rent charges to be payable out of the said premises, and to be clear of all parliamentary and other taxes and deductions whatsoever. *Thomas Pickard* being in possession of the estates under the will, by his will appointed the full annual sums of 250*l.* and 500*l.* to his wife, for her life. Upon his death, without issue, the defendant entered into possession of the estates.

On the first argument the Court of Exchequer held, that the annuity was charged upon the real estate by the will which created the power, in like manner as if the person to whom it was given, by the execution of the power, had been mentioned, by name, as the object of the testator's bounty, in the will which gave the power. On the argument in the Exchequer Chamber the Court held the same. The annuity was a legacy under the later will, in fact, but, in operation of law, it was a legacy under the other will; and the question was, in what character it was to pay duty. It derived its character out of the original will, and not the engrafted will. The proviso in the 45 Geo. III. c. 28, s. 4, was quite consistent with this view. It was admitted that the Court must go the length of saying, that if the power was executed by deed the charge was liable to the duty, as well as where it was executed, and the annuity given by a will; and not shrinking from that consequence, they were bound, by the principle disclosed in the proviso, to refer the liability to duty to the question — What was, in legal operation, the instrument by which the charge was made? And upon that, there was no doubt whatever that the charge was made by the original will, and not by that which was, accidentally, a will, not a deed, by which the original intention was carried into effect. The judgment was, therefore, affirmed.

It will be observed that the foregoing cases were decided with reference to the general principle before alluded to, that the party takes under the instrument creating the power, and that, therefore,

the decision would, in either case, have been the same had the execution of the power been by deed, and not by will. In the case about to be mentioned, under the will of the Marquis of *Hertford*, the creation of the power was by deed, and the execution by will, the duty being claimed under the special enactment in the 45 Geo. III. c. 28, s. 4.

The Attorney General v. *The Marquis of Hertford* (*p*) was, in form, a proceeding by information for the recovery of legacy duty, instituted for the purpose of taking the opinion of the Court by means of a special verdict. The case was as follows :—

By a deed of settlement of the 2nd October, 1802, estates in England and Ireland were settled to the use of the then Marquis of *Hertford* for life, with remainder to the use of the Earl of *Yarmouth*, (the late Marquis,) for life, with remainder to the use of his son, (the present Marquis,) for life, with remainder to the use of his first and other sons in tail, with remainders over; in which deed was contained a power for the late Marquis, by deed or will, to limit or appoint to or to the use of himself, or any person or persons whomsoever, any annual sum or sums, or yearly rent charge or rent charges, not exceeding, in the whole, the yearly sum of 700*l.*; to be issuing out of, and charged upon certain of the lands thereby settled, clear of all taxes and outgoings whatsoever, parliamentary or parochial; and to commence from the death of the late Marquis; to be perpetual and in fee, or payable for such term or terms, for such purposes, and in such manner as the said late Marquis should think proper, and should by such deed or will direct or appoint; yet so, that any such yearly rent charge should not become a vested interest, in any person, for any longer term or interest than during the life of such person, until such person should attain the age of twenty one years, or marry.

The late Marquis by his will executed the power, and appointed the full rent charge of 700*l.* a year to Lady *Strachan*.

It was contended on the part of the Crown, that this rent charge was, itself, real estate in the late Marquis, within the 45 Geo. III. c. 28, s. 4, which he had power to dispose of, and that he might give any portion of it, or, as in Mrs. *Cholmondeley's* case (*q*), the whole of it; and that whatever he might give, was a legacy, within the definition given in that clause; and further, that it was not a specific sum, or specific sums, within the meaning of the proviso, contained in the same clause, excepting from the operation of it

(*p*) 14 M. & W. 284. (*q*) Page 681, *post*

any specific sum or sums of money, or any share or proportion thereof, appointed or apportioned by any will or testamentary instrument, under any power given, for that purpose, by any marriage settlement, or deed or deeds charging the same on real estate. The contrary was insisted by the other side.

Judgment was delivered by Mr. Baron *Parke* to the following effect, *viz.*:—

If we had to construe the first part of the fourth clause in the 45 Geo. III. c. 28, only, without taking the proviso and subsequent section into consideration, we might, probably, have held that the appointment of the annuity was liable to duty. The case of *In re Cholmondeley* had already decided, that where a person had absolute power, under a settlement, to dispose of a sum of money by will, a gift, by will, of the whole of the sum, in different portions, to different legatees, was liable; and if, instead of a sum of money, the power had been to appoint an annuity charged upon personal estate, there would have been no doubt but that the gift of the annuity by will would have been liable to legacy duty, though the whole annuity had been given to one person. It cannot make any difference, in this respect, whether a part of the fund or the whole fund be given; the legacy is equally "satisfied out of" personal estate which the testator had power to dispose of as he should think fit.

If such be the construction of the 4th sect. relating to personalty, it would be reasonable to put the same construction on the part relating to real estate; and, therefore, we should have probably held, that this annuity, itself, being real estate which Lord *Hertford* had absolute power to dispose of, as the gift of a sum charged upon it, or of part of the annuity would have been liable, so a gift of the whole would. Still, however, there would have been a difficulty in fixing the defendant in this information with the duty under sect. 5, because, if the annuity *itself* was the "real estate" which the late Marquis had the power to dispose of, the defendant, the present Marquis, was not the person entitled to *that real estate*. He was entitled to an estate for life in the real estate *charged* with the annuity; but *that* real estate the late Marquis had no power to dispose of.

The proviso which follows, however, creates a further difficulty, which we cannot get over; and reading the whole clause together, we think that the intention of the legislature to render such a gift as this liable is, at all events, not so clearly expressed as that we ought to decide against the defendant. It is a settled principle that the subject ought not to be charged with duty, except by

words clearly imposing it. It is extremely probable that the framer of the clause intended to protect provisions for families only out of pecuniary charges on real estate, by ante-nuptial or post-nuptial settlements; but we cannot act upon conjecture. The words embrace every charge by *deed* of a *specific* sum or sums; and if the proviso protects an appointment by will where the charge is 700*l.* in one sum, it is difficult to conceive why it should not equally apply to any number of sums of 700*l.*, payable annually. Mr. *Crompton*, however, contended, that the words "specific sum" only applied to charges of sums certain, the precise amount of which was ascertained by the deed or settlement. But we have a difficulty in understanding why the legislature should mean to give an exemption where the charge was 700*l.* certain, and take it away where it was a charge of 700*l.*, *or less*, at the option of the donee of the power. Indeed Lord *Denman* has already intimated his opinion, in delivering the judgment in *Pickard* v. *The Attorney General*, that charges of this nature, (for the charge there was of an annuity not exceeding a certain amount,) would be exempt, if originally made by deed, under this proviso.

For these reasons we are of opinion that our judgment must be for the defendant.

The Court having thus, in this judgment, suggested a probable opinion, only, in favour of the Crown, on the point upon which the claim rested, and having taken an extended view of the proviso, contrary to what was expressly stated to be the probable intention of the legislature, the law has since been amended upon both points; by extending the operation of the clause, in charging the duty expressly on gifts which shall have effect or be satisfied, not only out of the real or heritable estate of the person dying, but out of or charged or rendered a burden upon any such estate which he shall have power to charge, burden or affect with the payment of money; and by restricting the proviso to sums of money subjected by *marriage* settlements to any limited power of appointment to or for the benefit of persons therein specially named or described as the objects of the power, and the issue of any such persons.

This provision is retrospective as well as prospective; that is to say, it applies to gifts by the wills of persons who died before the passing of the Act, as well as of those dying subsequently thereto, where such gifts are retained or paid or satisfied after the Act. But this point was disputed by the Marquis of *Hertford* in a second case, arising on a demand for legacy duty under the same will; the particulars of which case are as follow:—

In the settlement of 1802, before alluded to, giving both the late and the present Marquis successively an estate for life in the settled property, was contained a power enabling them, by deed, to revoke all or any of the uses limited by the settlement, and declare others. By indenture, dated 18th October, 1822, they executed this power, by authorizing the late Marquis, by deed or will, to charge the estates with any sum or sums, not exceeding 47,000*l.*, for his own use, or for any other purpose; and, for securing the same, with interest, to limit the estates to trustees for any term of years. By his will the late Marquis, in pursuance of such power, charged the estates with the payment to his executors of the full sum of 47,000*l.*, to be by them applied as by the said will is directed with regard to his residuary personal estate. And he devised the estates to trustees for a term of 500 years for raising the money. He gave the residue of his personal estate to his son, the present Marquis. In 1847, after the passing of the 8 & 9 Vict. c. 76, the debts and legacies having been paid, a portion of the 47,000*l.* was raised, and paid over to the present Marquis; upon which amount the Commissioners of Stamps required legacy duty to be paid; but the claim was opposed, the Marquis being advised that the Act did not extend to the case of a testator dying before the passing of the Act. It was, likewise, contended, amongst other things, that the proviso contained in sect. 4 of the 45 Geo. III. c. 28 was not repealed by the 8 & 9 Vict. c. 76; but the Court held that the proviso alluded to was, in effect, repealed by the latter Act; that the case was clearly within the precise terms of the Act, which was retrospective, embracing all legacies remaining to be paid (*r*).

Power to appoint personal estate.

The case of *Re Cholmondeley* (*s*), referred to in the first case of *The Attorney General* v. *The Marquis of Hertford*, related to personal estate only, and depended, solely, upon the construction of the Legacy Duty Acts, without regard, and, indeed, contrary to the general principle of law before alluded to, the power being created by deed. It will be as well an authority under, and illustrative of the operation of the recent enactment, as of the previous law. The question in dispute was argued on the usual rule, obtained under the 42 Geo. III. c. 99, s. 2, against the administrators with the will annexed of Mrs. *Cholmondeley*, for an account of the property of the deceased, the facts being stated by affidavit. By the marriage settlement of the deceased it was agreed, that the

(*r*) *Attorney General* v. *Marquis of Hertford*, 18 L. J. R. (N. S.) Exch. 332.

(*s*) 1 C. & M. 149.

trustees should stand possessed of 20,000*l.*, upon certain trusts for the benefit of Sir *Philip Francis*, the lady's father, for life, and, after his death, for the benefit of Mr. *Cholmondeley*, the intended husband, for life, and, after the death of the survivor, for the benefit of *Catherine Francis*, the intended wife, during her life, and, after the death of the survivor of all of them, for the benefit of the issue of the marriage, in case there should be any. And it was by the said indenture agreed, that in case there should be no child of the marriage, or none that should attain twenty one, or be married if a daughter, then the trustees should stand possessed of the fund upon and for such trusts, intents and purposes, and subject to such powers, provisoes, conditions and declarations as the said *Catherine Francis*, notwithstanding coverture, during the joint lives of herself and her intended husband, by her last will and testament, or appointment in the nature of a will, or any codicil thereto, or, in the event of her surviving her husband, by any deed or instrument, or by her last will and testament, or any codicil thereto, should direct or appoint; and in default of appointment, then in trust for her next of kin. Mrs. *Cholmondeley*, who died in the lifetime of her husband, without issue, by her will disposed of the whole fund in pursuance of the power.

It was contended that the gift by this will was not a legacy within the 55 Geo. III. c. 184, not being payable out of the personal estate of the deceased. It was admitted that if sect. 4 of the 45 Geo. III. c. 28, had been in existence this would have been a very difficult case to contend with, but it was submitted that that provision was at an end, and that, in deciding this question, the 55 Geo. III. c. 184 was, only, to be looked at.

The judgment of the Court was delivered by Lord *Lyndhurst*, who observed, that in order to come to a right conclusion upon the subject, it was necessary to advert to the previous Acts imposing duties on legacies. The first three Acts, 20 Geo. III. c. 28, the 23 Geo. III. c. 58, and the 29 Geo. III. c. 51, imposed the duties on receipts given upon the payment of legacies, in general terms, leaving the Court to define what was meant by a legacy. The next Act, 36 Geo. III. c. 52, enacted, that the duty should be payable upon all legacies paid out of the personal estate of the testator; but in the 7th section there was a declaration as to what was to be deemed a legacy within the meaning of the Act; by which it was enacted, that all gifts payable out of the personal estate of the testator, or out of the personal estate which he had the power of disposing of, should be deemed a legacy. The legislature, therefore,

in the Act itself, interpreted and defined what was meant by a legacy payable out of the personal estate. The next Act was the 44 Geo. III c. 98, in which there was no provision corresponding with that adverted to in the 36 Geo. III. However, if the question had arisen under the 44 Geo. III., his Lordship would have been of opinion that, as the legislature had, in the previous Act, defined what was meant by the term legacy, it would be considered that it used the term, (the Act being passed *in pari materiâ*,) in the same sense, and to the same extent in which it had used it in the previous Act; and it appeared obvious that this must have been the meaning, because the object of the 44 Geo. III. was to consolidate the regulations and provisions of the previous Acts, and to consolidate the duties. There was no intimation of any intention to reduce the duties; that led, therefore, fairly to the conclusion, that it was not intended, under the term legacy, to give a more limited meaning to it than in the 36 Geo. III. The Court was led to this conclusion by the consideration of the 45 Geo. III. c. 28, in which there was a clause similar to that in the 36 Geo. III. The language in the 48 Geo. III. c. 149, and 55 Geo. III. c. 184, in imposing the duties, was the same, in substance, as that in the 44 Geo. III.; and taking all the Acts together, therefore, applicable to the same subject and passed *in pari materiâ*, it seemed impossible to come to a conclusion that the legislature meant to use the term, legacy, in a more limited sense in the 48 Geo. III. and 55 Geo. III. than in the 36 Geo. III. and 45 Geo. III. If that be true, it would follow, that, under the 55 Geo. III., the duty would be payable, not only on a legacy payable out of the personal estate, strictly considered, of the testator, but out of any personal estate which he had the power of disposing of as he should think fit. That would apply to the present case, and the Court was of opinion, that duty was payable in respect of the property taken by the appointees under Mrs. *Cholmondeley's* will.

The only remaining case to be brought under review as an authority upon the subject of powers of appointment is *Platt* v. *Routh* in the Exchequer (*t*), and at the Rolls (*u*), and the same case, *Drake* v. *The Attorney General* (*x*), in the House of Lords. It will be found set forth, at length, under the head of "PROBATE DUTY" (*y*); for the present purpose it may shortly be stated thus: —*John Ramsden* by his will gave the residue of his property upon

(*t*) 6 M & W. 756
(*u*) 3 Beav. 257
(*x*) 10 Clark & Fin. 257.
(*y*) Page 605, *ante*.

trust for his daughter *Judith Ann Platt*, or her assigns, for her life; and after her death, upon trust for such person or persons, *other than two persons named, and their relations, and the relations of her late husband*, as she should by her will appoint; and in default of appointment, then over; with a proviso, that if his daughter should intermarry, or reside with, or receive visits from one of the said excepted persons, the gifts and bequests to her, and the trusts in her favour should be null and void. Mrs. *Platt* made her will appointing the property, and died. Legacy duty was claimed on the same property on the two devolutions, as on an absolute bequest under each will, *viz.*, 1*l. per cent.* on the whole value of the property under the father's will, as on an absolute gift, and not merely a life interest to the daughter, she having executed the power; and again, under the daughter's will, at the proper rate according to the relationship of the legatees to her. The former claim was advanced under the 18th section of the 36 Geo. III. c. 52, which directs that property given for any limited interest, with *a general and absolute* power of appointment, shall, upon the execution of such power, be charged with the same duty as if it had been, immediately, given to the person having and executing the power. The question was, whether the power was *a general and absolute* power; or, by reason of the restriction contained in it, a *limited* one. The claim under Mrs. *Platt's* will was made under the 7th section of the Act, as in respect of personal property which she had power to dispose of as she should think fit. This latter question, it will be perceived, depended upon the other, as the argument that would establish the power as a general and absolute one, within the former provision, must go, also, to show that the property, the subject of the power, was such as Mrs. *Platt* could dispose of as she should think fit, within the other section. It was determined, on every occasion, that the power was general and absolute, and that legacy duty was payable, as claimed by the Stamp Office. See the judgment as delivered by Mr. Baron *Rolfe* under the head "PROBATE DUTY."

The case of the *Customs Fund* is noticed here, not so much as an authority, as for the purpose of recording the opinion of the Court in reference to that particular property.

"The Customs Annuity and Benevolent Fund" is established under an Act of Parliament passed for "establishing and regulating a fund for the widows, children and relatives of officers or persons belonging to the department of Customs in England," by means of contributions of poundage on the salaries of officers admitted sub-

scribers. The object of the society is to provide a fund for the benefit of the widows, children or other relatvies, of the officers, under regulations to be made by the Directors; who, if they deemed it expedient, were to be at liberty to admit any person to be a nominee of a subscriber. The effect of the rules of the society was to give the widow a certain benefit, absolutely, without control, with a power to the subscriber to appoint by his will to relatives, or to a nominee, such nominee having been approved of by the Directors; and, if there should be no person to take under any of the rules, then the same was to be paid to the persons legally appointed to administer to the estate and effects of the deceased, to be applied according to the Statute of Distributions.

The Court considered that this was not personal estate of the subscriber, nor was it personal estate which he could dispose of as he should think fit. A certain annual sum was parted with for the power of appointing to a certain class of persons specified, or to a nominee *to be previously approved of by the Directors;* the power, therefore, was a limited power; and in any case the party would take under the Act of Parliament and the rules of the society (*y*).

THIRDLY,—*As to the Testator being a person within the meaning of the statutes.*

The only question, under this branch of the subject, is that of domicile. If this point, in reference to the Legacy Duty Acts, had been properly understood from the first, as it has recently been laid down in the House of Lords, the discussions in numerous cases that have, from time to time, during a long series of years, occupied attention in the different Courts, would have been saved. As it is, the decisions, really, go for nothing. Those that have not been positively overruled, have become, as it were, pointless; and admitting the principle, now settled as the governing one, to be the true principle, then the questions which were gravely argued ought not to have been entertained, in any of the cases alluded to; the simple answer to the claim of the Crown should have been, that the testator was domiciled abroad; that fact being an agreed starting point in every one of them, a feature admitted by, or taken for granted against the Crown. Instead, however, of being opposed as a test of the liability to legacy duty, as it now appears it ought to have been, the question discussed

(*y*) *Re Rowsell*, Exchequer, 1844.

was, whether there was an appropriation, or an administration of the property in this country. The cases are, upon this point, conflicting; but it is singular that it should not have occurred to the mind of any of the many learned Judges whose judgments have been, from time to time, exercised upon the subject, to suggest the true test, and thus, at once, put an end to the dispute upon a fact not questioned, every case before them being open to the suggestion. When the appeal of *Thomson* v. *The Advocate General* came on for argument in the House of Lords, the issue was, whether the circumstance of the administration in this country, of property of the deceased situate here at the time of his death, as insisted upon for the Crown, or the domicile of the testator, as contended for on the other side, was to be the rule; the facts being, shortly, that a British-born subject died domiciled in a British colony, leaving property in this country, which was administered here by a person taking upon himself the burden of the execution of the will; and the question being whether such property was liable to legacy duty. The decision was against the claim. A short review of the cases will be taken, although, perhaps, it may be considered, at least as regards some of them, a work of supererogation.

The first case is that of *The Attorney General* v. *Cockerell* (*z*).

The testator, *Alexander Anderson*, a Scotchman, was domiciled in India; he made his will and died there; his executors, who also resided in India, proved his will there, the property being all situated in India. One of the executors, General *Duff*, came to England, and brought some of the property with him, and more was remitted to him. General *Duff* died in England; and another of the executors, the defendant, Sir *Charles Cockerell*, came over and proved the will in England; he obtained possession of the property, and paid the legacies. The Court held, that having retained the legacies for the benefit of the legatees, he was liable to be called upon for payment of the duties.

The Attorney General v. *Beatson* (*a*) differs but little from the last case. The testator, *William Hope*, a Scotchman, was domiciled in India; he died at sea. Administration with the will annexed was granted to the Registrar of the Supreme Court of Judicature at Madras and, also, in England to the residuary legatee, *James Murray*. The property in India was paid over to *Murray's* attorney there and remitted to England. It was contended that *Murray* received the money as legatee, and need not have

(*z*) 1 Price, 165. (*a*) 7 Price, 560.

administered, and a distinction was endeavoured to be drawn between this and the former case; but the Court held that *Murray* was an administrator in fact and in law, and therefore, and because the estate had been applied in England, judgment was given for the duty.

The next case is *Logan* v. *Fairlie* (*b*), (first decision). The testator, *John Home*, a British subject, died domiciled in India, where his property was situate. His will was proved in India, by his executors, who also lived there. By the will the property was given in moieties to *James Home* and *Helen Logan;* but if the latter should be dead, her share was to go to her children. The executors remitted the money to England to be paid to the legatees. *James Home's* share was paid to him; but *Helen Logan* being dead, her moiety became the subject of a Chancery suit in order to secure the same for the children.

On one of the children's shares becoming payable a question of legacy duty arose, which the Vice-Chancellor decided in favour of the Revenue. His Honour said, "If a testator die in India, and his personal estate be there, his executor resident there, and his will proved there, and the executor remit to the legatee in England, or to some person to his use, duty would not be payable, inasmuch as the whole estate is *administered* in India. But if part of the assets be found in *England,* without any specific appropriation, and a legatee institute a suit here, the duty is payable. That is the case here; this money is estate of the testator's, administered here, and the legacy duty is, for that reason, payable."

In *Hay* v. *Fairlie* (*c*) it was held by the Master of the Rolls, that as the testator, *John Hay,* who died at sea, was domiciled in India, where his executors resided and proved the will; and as the whole estate was administered in *India,* the particular legacy in the case having been appropriated in India, although paid in England, the duty was not payable.

Next in order bearing upon the point, is the case of *Re Ewin,* although the ground of the claim was the converse of that in all the other cases (*d*). This was a rule under the 42 Geo. III. c. 99, s. 2, calling upon the executor to show cause why he should not deliver the usual account, the question being whether the property

(*b*) 2 Sim. & Stuart, 284. (*c*) 1 Russ. 117.
(*d*) 1 C. & J. 151; 1 Tyr. 92.

of the deceased in the *American, Austrian, French* and *Russian* funds was liable to legacy duty, he being domiciled in *England*. These funds were transferable and the dividends payable in those countries only. The debts of the testator had been paid out of personal property in this country, and the stock had been transferred by the executor into the name of the residuary legatee, by means of powers of attorney. It was suggested that the property was real estate.

The Court considered that this was personal property, and held that the duty was payable.

Lord Chief Baron *Alexander* had not, during the argument, any doubt upon the point. The Act imposed a duty upon legacies, and the duty attached the moment they were paid. It was a charge upon the personal estate to be handed over to the legatee. His Lordship observed, that he thought the Act was confined to Great Britain. Where persons died in India, whose estates, though the estates of British subjects, were distributed in *India*, and were delivered over to the legatees in *India*, it never had been the practice to charge them, nor was it intended that they should be charged. But it never could be doubted that the Act was meant to include the estate of a person domiciled in *England*, a subject of this country, an Englishman whose executors were living in this country. The duty upon the probate is only in respect of that fund which the executor is to obtain in a particular province by force of that probate, the words of the Act being, "where the estate and effects for or in respect of which such probate shall be granted." But when the Act speaks of the legacy duty, it is charged upon the amount of the estate itself to be handed over, upon the receipt which the executor, to save himself from the penalty, ought to take before he pays the money.

Mr. Baron *Bayley* considered the case, from the first, free from doubt. It was the case of a will made by a *British* subject domiciled in *England*, and it was to be executed by an *English* executor upon that which, throughout, in his opinion, was *English* personal property. As to its being real property it would be for the party who insisted on this, and who ought to know the character of the property of which he was the owner, to show that such was the character of this property. The place where the thing is payable or transferable was not to be looked at, but the rules of law were to be ascertained with regard to personal estate not locally in this kingdom, but being locally situated abroad.

His Lordship referred to *Bruce* v. *Bruce* (*e*), and *Somerville* v. *Somerville* (*f*), from which it was clear that the rule was, that personal estate followed the person, and was not regulated by the *situs*. Wherever the domicile of the proprietor was, there the property was to be considered as situate. The probate duty was only with reference to the *situs* of the property. There was a plain distinction between the cases where persons died domiciled in India, and this case; the Legacy Acts were co-extensive only with this kingdom, and did not extend to the territorial possessions of the Crown in India.

Re Bruce (*g*) was a case in which, also, the question was raised on the usual rule under the 42 Geo. III. c. 99.

The testator's father was a Scotchman by birth, but in his youth he went to reside in America, and married an American woman. The testator was born in America about 1764, and having resided for many years in India and realized a fortune, he retired to America, where he died in 1826, leaving property in England and in America, and having by his will given legacies out of the property in both countries to British legatees. From all the facts of the case, which it is not necessary to state, the Court came to the conclusion that the testator was at the time of his death an American; and upon the principle that he was not a British subject, not bound by the laws of this kingdom, and that he was entitled to consider his property, though locally here, as not being British, but American, their Lordships were all of opinion that legacy duty was not payable. Without expressing any opinion whether the legacy would or would not be payable where the testator was a British subject, not resident in Great Britain when he made his will, and in respect of property which he happened to have in this kingdom at the time when he made his will, they were of opinion that the cases of *The Attorney General* v. *Cockerell*, and *The Attorney General* v. *Beatson*, and *Logan* v. *Fairlie* were distinguishable in this respect, that there the property was that of British subjects, and the testators were resident in India, and they were originally British born. They were, therefore, liable to be bound by all Acts of Parliament, sufficiently comprehensive to include them, made by the British Parliament, and that was not the case with this testator.

It may here be remarked that, although in *Ewin's* case legacy

(*e*) 2 Bos. & P. 229 (*n*). (*f*) 5 Ves. 750.
(*g*) 2 C. & J. 436; 2 Tyr. 375.

duty was held to be payable on foreign property of a British subject domiciled in England (where the property was, in law, also administered), but in *Re Bruce* not to be payable on the property in England of a foreigner domiciled abroad, it was still considered, by the learned Judges who decided both cases, to be an open question, whether, if in the latter case the deceased had been a British subject, the duty would have attached.

Jackson v. *Forbes* (*h*) was a case in the Court of Chancery, *The Attorney General* v. *Jackson* (*i*) being the same case on appeal to the House of Lords. The testator, *Colin Anderson*, was a Scotchman domiciled in India; he died on a voyage from Calcutta to Bombay, having made his will, which was proved in India by his executors, who resided there. His property was all in India. The executors paid all the debts and pecuniary legacies in India; and, pursuant to the regulations of the Recorder's Court of Bombay, they rendered to the Recorder an account of the administration of the estate, which was approved.

In 1805 one of the executors came to England with three of the illegitimate children of the testator (his four children being the residuary legatees), and brought part of the residue with him; the remainder was remitted in 1811 by another executor, Sir *Charles Forbes*, to the agents and bankers of the executors in England, who afterwards accounted for the same to Sir *Charles Forbes*; and he and his co-executor having administered (in India) the testator's goods, invested the residue, or a principal part, in Consols, in the names of the executors. The eldest son came of age in 1809, and the executors kept a separate account with him, but made no distribution. They continued to maintain the other children. In 1819 the bill was filed by one of the daughters and her husband, for ascertaining the rights of all parties; and the usual decree to take the accounts having been made, the Master made his report, adopting the account rendered at Bombay, and certified the clear residue; a final decree was afterwards made declaring the rights of the parties. The Attorney General presented a petition, claiming payment of legacy duty on the residue, and a case was directed for the opinion of the Judges of the Court of Exchequer, who certified, without stating any reasons, that legacy duty was not payable; and the Lord Chancellor having adopted the certificate the Attorney General appealed to the House of Lords, where the decision of the Lord Chancellor was affirmed.

(*h*) 2 Cromp. & Jer. 382. (*i*) 8 Bligh, 15.

Lord *Brougham* said, that he and Lord *Plunkett* agreed, that this judgment did not conflict with the case of *The Attorney General* v. *Cockerell*, in which, as the judgment stated, the party *assumed the character and duty of executor*; nor with that of *The Attorney General* v. *Beatson*, in which the defendant proved the will in England; and he observed that in *Re Ewin* the will was made and proved in England, and that the only point decided was, that assets which were in foreign funds were liable to duty in this country.

Logan v. *Fairlie* (*k*) was the case of another petition in the suit of the same title before mentioned, presented to the Lords Commissioners of the Great Seal, for payment of another share of the property; the same question being again raised in consequence of the intermediate decision in *The Attorney General* v. *Jackson*, which case their Lordships held had more than covered this; there was less appropriation of the property in India in that case than in this; the duty, was, therefore, not payable.

Arnold v. *Arnold* (*l*) was another case in Chancery. The testator *George Arnold*, assumed to be an Englishman, was domiciled and died in India, where he made his will. He left property both in India and in England, and the will was proved in both countries; but the English property being given to the wife, no question arose in respect of it, the wife not being subject to duty. The executor in India collected in all the assets, and paid the funeral expenses and all the Indian debts, and remitted the residue to England; and Mrs. *Arnold* and the children having come to this country, a suit was instituted for fully administering the property; upon which property the Crown claimed legacy duty. Against the claim it was contended, that, as it was now settled by *Ewin's* case, that upon the death of a testator, having an English domicile, legacy duty attached upon property situate abroad, the converse must hold where the domicile was abroad. The counsel for the Crown insisted that not domicile, but administration must govern the case. The Lord Chancellor was of opinion that independently of the cases, and upon the construction of the statute, these were not legacies given by the will of a person intended by the Act; but he considered the question concluded by authority, and held that legacy duty was not payable.

The Attorney General v. *Dunn* (*m*) was an information for legacy

(*k*) 1 Mylne & Cr. 59. (*l*) 2 Mylne & Cr. 256.
(*m*) 6 M. & W. 511.

duties, and the question was, chiefly, whether the testator, *Thomas Boone Tattnall Boone,* an Englishman, although born in the Bahamas, who left personal property both in this country and abroad, was, at the time of his death, domiciled in England, or in the Papal States. All the circumstances as to the testator's residence were stated in a special verdict, but the fact of the domicile not appearing, it was arranged that the Court should be at liberty to find whether the testator had or had not acquired a domicile in the Papal States, and that such finding should be inserted in the verdict, and be final. No point of law was decided by this case, the Court being of opinion, that, although the testator had an *intention* of making Rasina (the estate purchased by him in the Papal States) his permanent residence after he had completed certain improvements, he was not domiciled there; and that he was not domiciled in any other place in which he had taken up his abode abroad, and that, therefore, his English domicile remained. Whether or not legacy duty would have been payable if the domicile had been abroad it was unnecessary to decide. The Lord Chief Baron entertained an opinion, but did not express it. Mr. Baron *Parke* was not prepared to say that he had made up his mind that it would be payable; but Mr. Baron *Alderson* thought, as then advised, it would.

The question in *The Charitable Commissioners* v. *Devereux* (*n*) arose on a petition before the Vice-Chancellor of England. The testator, *James Fanning,* was by birth an Irishman, but many years before the French Revolution he left Ireland and settled in France, where he purchased real estates, and a title of nobility. During the Revolution he came to England, and his property was confiscated as that of a French emigrant. After the Peace of Amiens he returned to France, where he died in 1806. He made a will in England, and a second will in France, disposing of his property, if restored to him, and appointed a Mr. *Devereux* his executor, who, after the Peace of 1814, established a claim to a portion of the fund set aside by the French government, under the treaty to indemnify British subjects for losses sustained by the Revolution; and it was sought to charge legacy duty on a part of this claim; but the Vice-Chancellor held, in reference to former decisions, that as there were, in this case, a foreign domicile, a foreign will, and foreign property, it was perfectly plain that the legacy duty was not payable.

(*n*) 13 Simons, 14.

Re Coales (*o*). In this case the executor objected to pay legacy duty on property situated in India at the time of the testator's death; possession of which was obtained by means of administration procured from the Supreme Court at Calcutta, under a power of attorney from the executor in England. After *Ewin's* case there really was no point for argument in this; it not being attempted to be shown that the testator, although not a native of Britain, was not domiciled here. The case of *Arnold* v. *Arnold* was referred to by the counsel for the executor, but the Court considered that, upon the authority of that very case, legacy duty was payable.

It was said by some of their Lordships in *Thomson* v. *The Advocate General*, as it had been by Lord *Cottenham*, in *Arnold* v. *Arnold*, that the earlier cases of *The Attorney General* v. *Cockerell* and *The Attorney General* v. *Beatson* had been overruled. So far as the principle upon which they were determined goes, there is, certainly, nothing in any of the subsequent cases, unless it might be that of *Re Ewin*, from which it could be inferred that they were wrongly decided; but, as regards the facts necessary for the operation of such principle, there might be the same question as there was in the first case of *Logan* v. *Fairlie*, as determined on the subsequent occasion in that cause. In *The Attorney General* v. *Jackson* it was expressly stated by the Lord Chancellor, that the decision did not conflict with the early cases. But, as remarked by Lord *Campbell* in *Thomson's* case, the doctrine of domicile, which had recently sprung up in this country, was thought very little of either by the legislature or the Judges until within these few years; it certainly was not at all regarded in the first cases.

Thomson v. *The Advocate General* (*p*) was determined in the House of Lords, on a writ of error from the judgment of the Court of Exchequer in Scotland, given for the Crown on an information for legacy duty. The case was twice argued; on the second occasion before the Judges; the facts were as follows, *viz.* :—

John Grant, a native of Scotland, died domiciled in Demerara, possessing property in Scotland. By his will he gave legacies to persons in Scotland, but appointing executors who were resident in the colony. The executors appointed Mr. *Thomson* (the plaintiff in error), their attorney in Scotland to obtain possession of and administer the property there, who accordingly took out confirma-

(*o*) 7 M. & W. 390. (*p*) 13 Simons, 153; 12 Clark & Fin. 1.

tion of the will, and, having realized the property, paid the legacies upon which the claim was made for duty.

The opinion of the Judges, as read by the Lord Chief Justice *Tindal*, was as follows :—

"The question which your Lordships have put to Her Majesty's Judges is this: '*A. B*, a British-born subject, born in England, resided in a British colony; he made his will and died domiciled there. At the time of his death he had debts owing to him in England; his executors in England collected these debts, and, out of the money so collected, paid legacies to certain legatees in England. The question is—are such legacies liable to the payment of legacy duty?'

"In answer to this question, I have the honour to inform your Lordships that it is the opinion of all the Judges who have heard this case argued, that such legacies are not liable to the payment of legacy duty.

"It is admitted in all the decided cases, that the very general words of the statute, 'every legacy given by any will or testamentary instrument of any person' must, of necessity, receive some limitation in their application; for they cannot in reason extend to every person, every where, whether subjects of this kingdom or foreigners, and whether at the time of their death domiciled within the realm or abroad; and as your Lordships' question applies only to legacies out of personal estate, strictly and properly so called, we think such necessary limitation is, that the statute does not extend to the wills of persons at the time of their death domiciled out of Great Britain, whether the assets are locally situated within England or not; for we cannot consider that any distinction can be properly made between debts due to the testator from persons resident in the country in which the testator is domiciled at the time of his death, and debts due to him from debtors resident in another and different country; but that all such debts do equally form part of the personal property of the testator, and must all follow the same rule, namely, the law of the domicile of the testator or intestate.

"And such principle we think may be extracted from all the decided cases, though sometimes attempts have been made, perhaps ineffectually, to reconcile with them the earlier decisions. There is no distinction whatever between the case proposed to us and that decided in the House of Lords, *Forbes* v. *Jackson*, and *The Attorney General* v. *Jackson*, except the circumstance, that in the present question the personal property is assumed to be, for

the purpose of the probate, locally situated in England at the time of the testator's death: but that circumstance was held to be immaterial in the case *Ex parte Ewin*, where it was decided that a British subject, dying domiciled in England, legacy duty was payable on his property in the funds of Russia, France, Austria, and America. And again, in the case of *Arnold* v. *Arnold*, where the testator, a natural-born Englishman, but domiciled in India, died there, it was held by Lord *Cottenham*, that the legacy duty was not payable upon the legacies under his will, his Lordship adding: 'It is fortunate that this question, which has been so long afloat, is now finally settled by an authoritative decision of the House of Lords.'

"And as to the argument at your Lordships' bar on the part of the Crown, that the proper distinction was, whether the estate was administered by a person in a representative character in this country, and that in case of such administering the legacy duty was payable, we think it is a sufficient answer thereto, that the liability to legacy duty does not depend on the act of the executor, in proving the will in this country, or upon his administering here; the question, as it appears to us, not being whether there be administration in England or not, but whether the will and legacy be a will and legacy within the meaning of the statute imposing the duty.

"For these reasons we think the legacies described in your Lordships' question are not liable to the payment of legacy duty."

The Lord Chancellor spoke to the effect following:—

"It appeared to me, in the course of the argument, that the question turned, as it must necessarily turn, upon the meaning of the statute. In the very first section of the statute the operation of it is limited to Great Britain; it does not extend to Ireland; it does not extend to the colonies; and, therefore, notwithstanding the general terms contained in the schedule, these terms must be read in connection with the first section of the Act; and it is clear, therefore, that they must receive that limited construction and interpretation which is only consistent with the first section of the Act. Accordingly, it has been determined, in the case that was cited at the bar, *In re Bruce*, that it does not apply, notwithstanding the extensive terms, to the case of a foreigner residing abroad, and a will made abroad, although the property may be in England, although the executors may be in England, although the legatees may be in England, and although the property may be administered in England. That was decided expressly in the case

In re Bruce, which decision has never been quarrelled with that I am aware of, and in which the Crown seems to have acquiesced. Also, it has been decided in the case of British subjects domiciled in India, and having large possessions of personal property in India, that the legacy duty imposed by the Act of Parliament does not apply to cases of that description, although the property may have been transmitted to this country by executors in India to executors in this country for the purpose of being paid to legatees in England. Those are the limitations which have been put upon the Act by judicial decisions. But then this distinction has been attempted to be drawn, and it is upon this distinction that the whole question turns. It is said that in this case a part of the property was in England at the time of the death of the testator, a circumstance that did not exist in the case of *The Attorney General* v. *Jackson*; and which did not exist in the case of *Arnold* v. *Arnold*; and it is supposed that some distinction is to be drawn with respect to the construction of the Act of Parliament arising out of that circumstance. I apprehend that that is an entire mistake; that personal property in England follows the law of the domicile; that it is precisely the same as if the personal property had been in India at the time of the testator's death. That is a rule of law that has always been considered as applicable to this subject; and, accordingly, the case which has been referred to by the learned Chief Justice, the case of *Ewin,* was a case of this description. An Englishman made his will in England; he had foreign stock in Russia, in America, in France, and in Austria; the question was, whether the legacy duty attached to that foreign stock, which was given as part of the residue, the estate being administered in England; and it was contended, I believe, in the course of the argument, by my noble and learned friend who argued the case, in the first place, that it was real property; but finding that that distinction could not be maintained, the next question was whether it came within the operation of the Act; and although the property was all abroad it was decided to be within the operation of the Act as personal property, on this ground only, that though it was personal property, it must, in point of law, be considered as following the domicile of the testator, which domicile was England. Now, if you apply that principle, which has never been quarrelled with, which is a known principle of our law, to the present case, it decides the whole point in controversy; the property, or part of the property, was in this country at the time of the death of the testator: it was personal property, and, taking

the principle laid down in the case of *Ewin*, it must be considered as property within the domicile of the testator in Demerara; and it is admitted that if it was property within the domicile of the testator in Demerara, it cannot be subject to legacy duty. Now, that is the principle upon which this case is decided; the only distinction is that to which I have referred; and which distinction is decided by the case *In re Ewin* to be immaterial.

"Now, that being the case, and the principle upon which I think this question should be decided, I was desirous of knowing what were the grounds of the judgment of the Court below.

"I find that the judgment was delivered by two, or rather that the case was heard by two very learned Judges, Lord *Gillies*, and Lord *Fullerton*. The judgment was delivered by the late Lord *Gillies*. I was anxious therefore, from the respect which I entertain for those very learned persons, to know what were the grounds upon which their judgment was rested.

"The first case to which they referred, for it was principally decided upon authority, was a case decided before Sir *Samuel Shepherd*, Chief Baron of Scotland. That case, in the judgment, was very shortly stated, and I am very happy that the Solicitor General gave us the particulars of that case, for it appears that the legacy was charged upon real estate, and therefore it would not come within the principle which I have stated, and there might, therefore, have been a sufficient ground for the decision in that case. It is sufficient to say, that it does not apply to the case which is now before your Lordships' House."

His Lordship then alluded to the cases of *The Attorney General* v. *Dunn*, and *Arnold* v. *Arnold*, as authorities relied on by the Court below, and concluded by expressing an opinion that none of the authorities sustained the judgment; and that upon the true construction of the Act of Parliament, and applying the known principles of the law to that construction, legacy duty was not, in a case of this description, chargeable.

Lord *Brougham* and Lord *Campbell* concurring, the judgment below was reversed.

Their Lordships took especial care to let it be understood that their decision did not affect the probate duty, which there could be no doubt was payable in respect of the property; Lord *Brougham* particularly referring to the case of *Buonaparte*, upon the probate of whose will his Lordship had advised that duty was clearly payable.

The case alluded to by the Lord Chancellor, as one upon which the Judges in the Court below had relied, was *The Advocate General* v. *Grant*, in which Sir *Samuel Shepherd* delivered judgment on the 5th July, 1825; an authenticated copy of the notes of the judgment being produced. It being understood that the legacies given by the testator in that case, Lord *Findlater*, were out of real estate, it was at once treated as inapplicable to the present question; that, however, was not altogether correct; there was a large amount of personalty, the subject of the proceeding; but the question discussed was, whether the legacies were free from duty, not by reason of the foreign domicile of the testator, but because the legatees were foreigners. His Lordship went fully into the general law, pointing out that foreigners as well as British subjects were liable to be taxed for their property in this country, and concluded by declaring the legacies in question liable to duty.

However the law, as settled by the Courts, may have varied, from time to time, upon the points under review, and whatever doubts may have hung upon such as were not distinctly disposed of, every question raised in any of the cases has now been unequivocally disposed of by the application of a simple, intelligible principle—the domicile of the deceased. It may, therefore, be broadly laid down, that if the testator or intestate be, at the time of his death, domiciled out of the United Kingdom, no legacy duty will be chargeable on any portion of his personal or moveable property; but that if he die domiciled within the kingdom, all such property belonging to him, wheresoever situate, is liable to the duty.

One perplexing difficulty is placed in the way of executors by this doctrine of domicile, as has already been experienced in many instances; *viz.*— the question of fact as to the domicile. In numerous cases where the deceased resided abroad, and was supposed to have had his domicile there, it is felt to be exceedingly doubtful whether the foreign domicile really existed or not; and executors are in this dilemma, they must either pay the duty, or leave themselves open to a claim from which they cannot escape, or be released; and which may, perhaps, be made at a distant period, when they possess no funds to answer or contest it. This, however, is a necessary attendant upon the principle established. See the case of *The Attorney General* v. *Dunn*, as fully reported in 6 M. & W. 511, showing the extreme difficulty of determining the question of actual domicile.

Although the subject, comprised under the three heads into

which the writer has thought it convenient to divide it, has now been exhausted, there remain various cases relating to legacy duties still to be noticed.

Duty payable on interest.

The Crown is entitled to duty on the interest accrued on the legacies and residue where payment is deferred.

As to interest on residue.

An information (*q*) was filed against the executor and residuary legatee of Lord *Frederick Cavendish* for legacy duties, and a special verdict was taken stating the following facts, *viz.*: Lord *Frederick Cavendish* died 21st Oct. 1803, and his will was proved on the 29th Oct. following. On the 30th July, 1808, the defendant transmitted to the Commissioners of Stamps an account of the testator's personal estate intended to be retained by him for his own benefit in due course of administration, as executor and residuary legatee, and offered to pay 1225*l.* 2*s.*, the duty on 49,006*l.* 4*s.* excluding all the interest which had accrued after the testator's death, which, if added, would have made the whole amount to 61,964*l.* 6*s.* 1*d.*, the duty upon which was 1549*l.* 2*s.* 1*d.*, after deducting the property tax.

The question was which of the two sums the Crown was entitled to receive from the defendant.

The case having been twice argued, judgment was delivered by Chief Baron *Macdonald*, who, after stating the facts and the point, proceeded as follows, *viz.*:—

The clause in this act (36 Geo. III. c. 52) that is most material is the 35th, but neither in this, nor in any other, is any particular time mentioned; so far as it goes it seems to speak of the time then present; it certainly does not refer back, and all the other clauses seem of the same description; it seems, therefore, to refer to the time when the residuary legatee was performing the act of retaining.

The 6th section directs the duties to be paid by the executor upon retainer; there the *punctum temporis* is the act of retaining. The 22nd, though referring to specific legacies, strongly applies; "to set a value thereon" clearly refers to the time present: how easy to have said "what the value was at his death," if the legislature had so intended it. The 23rd also is material; the duty which is to be charged and paid in respect of any legacy "according to the amount or value of the property taken in satisfaction thereof," must mean according to the value of the property at the

(*q*) *The Attorney General* v. *Cavendish*, Wightwick, 82.

time of taking it in satisfaction of the legacy. The 33rd also has a similar provision, but not a hint of any time but the present. Collating all the clauses that can profitably be referred to, the computation is to be made on the value at the time of computing, and there is no distinction made by the Act, in this respect, between the present and such cases as are embraced by those clauses The word residue has a clear meaning; it refers not only to the sum at the time of the death, but it draws along with it the interest, the Act does not, in terms, say whether the duty is to be charged upon the amount at the death, or upon the amount by accretion; the defendant, therefore, ought to show that in this case a different meaning belongs to the word. The law could not fix a time; many circumstances might embarrass and delay, as has happened in the present case; and in the mean time estates may increase by dividends or by interest. But they may also decrease. Suppose the residue to be 20,000*l.* in the Three per Cents., which were at *par* at the testator's death, and before the delivery of the note they fall 50 *per cent.*, would it be right to charge the duty upon the stock at *par* as at the time of the death? The Attorney General would then be told that the Act did not say so. Or if a valuable house, worth 10,000*l.*, were burned down the day after the testator's death, and the materials were only worth 200*l.*, would it be right to charge upon the 10,000*l.*? Here 10,000*l.* was lying at the bankers'; if the bank had failed, is the duty to be paid, though only one penny in the pound be recovered? Take the case of a lease for three lives, and the two youngest die off, must you go back and compute the value as on three lives, when only one of eighty years is left? If taken from the death, in such instances of decrease, it would be evident oppression; but it is quite indifferent to the legatee whether the duty be taken at the death or ten years afterwards, he pays the same; if taken immediately 10*l.* only is paid, if he waits ten years that would give 5*l.* interest, and then 15*l.* is demanded; yet he still pays only the 10*l.* which he should have paid originally. The public had a right to the 10*l.* at first, and so they have to the profit made by that 10*l.* after it had legally vested in Government. Upon the whole, therefore, we are of opinion that the construction contended for by the Crown is the least inconvenient; in no case can the legatee be out of pocket by it; and by the other construction the public would be inconvenienced, as it would make it the interest of the executor to delay. In cases of diminution it would be great hardship and oppression

to compel the party to pay upon the residue at the death; in cases of augmentation he can be no loser whether he pays the simple duty at the death, or the duty and the interest made upon it ten years afterwards.

Judgment was, therefore, for the Crown.

As to interest on legacies.

The right of the Crown as established in this last case in respect of the residue was held, in *Thomas* v. *Montgomery* (*r*), to extend to definite pecuniary legacies also. The Duke of *Queensbury* bequeathed legacies to a large amount by his will, which he directed to be paid within three months after his decease. Shortly after his death, which took place in December, 1810, a suit was instituted and the fund was brought into Court. In 1818, and again in 1824, a part of the fund, with the accumulations, was apportioned amongst the legatees, the legacy duty being paid on the whole so divided. On the remainder being about to be paid a petition was presented, praying that only so much might be deducted for legacy duty, as, with what had already been paid, would make up the amount of duty for the principal only. A distinction was attempted to be made between this case and *The Attorney General* v. *Cavendish*.

The Lord Chancellor said that it was the duty of the Court to put all parties as nearly as possible in the same situation as if the legacies had been paid three months after the testator's death. It must be considered that the fund was appropriated from the time when the legacies were payable, in part for payment of the duty which attached upon the legacies; at that time, therefore, a certain proportion of the sum would have belonged to the legatees, and a certain proportion to the Crown; and it appeared to his Lordship to be the justice of the case, and not contrary to the Acts of Parliament, but rather consonant to their whole scope and spirit, that the legatees should have that part of the fund which they would have had if the appropriation had been made at the time fixed by the will, and that the Crown should have the full benefit of that part which it would have been incumbent on the Court, at the same time, to have set apart for the discharge of the duty (*s*).

A legacy to a man and his wife is chargeable with duty in moieties.

Where a legacy is given to a man and his wife, standing in different degrees of consanguinity, or one of them only being a stranger in blood to the testator, the duty is to be charged in moieties according to the rate payable by each person, without regard to the

(*r*) 3 Russ. 502.

(*s*) See note, page 674, *ante*, as to accumulation of profits chargeable.

marital rights of the husband. This was held in *The Attorney General* v. *Bacchus* (*s*), both in the Exchequer and the Exchequer Chamber; in which case the testator gave all the residue of his personal property to his son-in-law *George Bacchus* and his wife, the daughter of the testator, for their absolute benefit; the husband being a stranger in blood.

The same was again determined in *The Attorney-General* v. *Burnie* (*t*); where the testator, *William Moffatt*, gave the residue of his property to the use of his son *William Moffatt* and *Jane* his wife for their lives, with remainder to his, the testator's grandchildren.

As to the time when a legacy is to be considered as paid.

Duties can, of course, be imposed by any Act of Parliament only on such legacies as may be afterwards paid; those that have already been satisfied there are no means of taxing. The 55 Geo. III. c. 184 (the present Act), charged such legacies as should be "paid, delivered, retained, satisfied, or discharged" after the 31st August, 1815; and the 48 Geo. III. c. 149, those paid, &c., after the 10th October, 1808 (*u*). Questions have, however, arisen, from time to time, as to what constitutes a payment, where property has been given by a testator who died before either of those dates, subject to a life interest which terminated subsequently thereto. Such cases can, at this distance of time, but rarely happen. The following are those in which the point has been considered by the Courts of Exchequer and Chancery.

Lord *Wm. Manners* (*x*), by his will dated 8th July, 1771, bequeathed 13,000*l.* to his executor, in trust to place the same out at interest in the funds, or on real security, and to pay the dividends or proceeds to his son, or reputed son, the Rev. *Thomas Manners*, for his life; and, after his decease, he directed that one moiety should be paid to the eldest son, and the other to the younger children of the said *Thomas Manners*.

The testator died shortly after making his will. *John Manners*, the executor, did not place out the 13,000*l.*, but retained it in his own hands as executor, and regularly paid the interest of it to *Thomas Manners* up to the time of his, *John Manners's* death, in 1793.

In 1794, *Thomas Manners* and his two only sons applied to the executors of *John Manners* to have the money invested, and the

(*s*) 9 Price, 30; 11 Price, 547.

(*t*) 3 Y. & J. 531.

(*u*) See *The Attorney General* v. *The Marquis of Hertford*, *ante*, page 681, as to the interpretation of the 8th & 9th Vict. c. 76, upon this point.

(*x*) *The Attorney General* v. *Manners*, 1 Price, 411.

same was, in that year, invested in the Five per Cents., in the names of the executors.

Thomas Manners died in 1812, having survived both his sons. *Thomas*, the eldest son, by his will dated in 1791, bequeathed his moiety. The other son, in 1783, made a settlement of his share.

The question was, whether this was a legacy given by the will of a person dying before the 5th April, 1805, and paid, delivered, retained, satisfied, or discharged after the 10th October, 1808, and so, liable to duty under the 48 Geo. III. c. 149.

Chief Baron *Thomson* delivered the opinion of the Court to the effect following, *viz.* :—

In point of fact, it remained matter of uncertainty till after the death of *Thomas Manners*, who would be entitled to receive the legacy; for it was not given to the children of *Thomas Manners* then living, but one moiety was given to his eldest son, and the other to his younger children. This bequest would, certainly, vest in all the children of *Thomas Manners* who should be living at the time of the testator's death, for it was not a bequest of a moiety to his eldest son then living, but to the eldest son, and of the other moiety to the younger children. Now, although their separate shares vested in all the children of *Thomas Manners* living at the death of Lord *William Manners*, they were still liable to open and let in any other children coming *in esse* during the life of the father. The consequence was, that the capital could not be paid till the death of the father. In this situation the executor did nothing in the shape of appropriating the legacy. He retained it, indeed, as it appears, in his own hands, but it was never divided from the bulk of his personal estate; and he paid the interest of it. In 1794, his executors, who were also the executors of Lord *William Manners*, did what was something like an appropriation; but that was merely laying it out in their own names, it being uncertain who would be entitled till the death of *Thomas Manners*. That event had now happened and the two sons were the only persons who became entitled; and they could not till that time have known what would have been the amount of their shares.

Now as to the question of this being a legacy retained after the 10th October, 1808; it was, in fact, actually retained at the moment of giving the judgment, and retained for the benefit of those legatees who became entitled on the death of *Thomas Manners;* and the Court was of opinion that it came, precisely, within the description in the Act of the 48 Geo. III., of a "legacy which had been retained after the 10th October, 1808, for the benefit of per-

sons, strangers in blood" to the testator; and was subject to the duty claimed.

James Smith (*y*) by his will gave 3000*l.* to his executors upon trust to invest the same, and pay the interest to *Ann Atkinson* for her life, and after her decease to apply the same to the maintenance and education of the child with which she was then *enceinte*, and to transfer the principal to such child at twenty one; but in case it should die under twenty one, then to *Tabitha Leake*, her executors, administrators, and assigns.

The testator died 21st July, 1776; *Ann Atkinson* was not *enceinte*, and by a decree, at the Rolls, on the 9th March, 1779, it was declared that *Ann Atkinson* was entitled for life, and that subject thereto *Tabitha Leake* was entitled to the principal; which it was ordered should be paid into Court and invested; and that on *Ann Atkinson's* decease *Tabitha Leake* should, on attaining twenty-one, be at liberty to apply for a transfer. Under this decree the executors paid the money into Court in 1779, and the dividends on the stock purchased were paid to *Ann Atkinson* until her death in 1826. The question, which was raised on petition, was, whether legacy duty was payable on this fund by the persons claiming under the settlement made on the marriage of *Tabitha Leake*, who died in 1794; the Accountant General objecting to make the transfer until a legacy duty receipt was produced.

On the part of the Crown it was contended that the legacy came within the words of the Act (48 Geo. III. c. 149), "paid, delivered, retained, satisfied, and discharged," *after* the 10th October, 1808; not being considered as "paid, &c." within the meaning of these words until the transfer of the principal; and *The Attorney General* v. *Manners* was referred to. On the other side it was insisted that, admitting the authority of that case, it was not applicable to the present; because there it was uncertain, during the life of *Thomas Manners*, who would be entitled; and that, consequently, the legacy was never in any manner appropriated.

The LORD CHANCELLOR delivered his judgment to the following effect:—

The executors, by paying in the money under the decree, effectually divested themselves of the possession, and all control over the legacy. Then came the 20 Geo. III. (1780) imposing a duty on "*receipts for legacies*," which duty was augmented by two subsequent Acts, still following the same description; under which, as

(*y*) *Hill* v. *Atkinson*, 2 Mer. 45; 3 Price, 399.

was decided in *Green* v. *Croft* (*z*), no duty was payable in cases where a receipt could not be given; and, accordingly, *Heath*, J., observed, that it was a great error in the Legacy Acts that legacies themselves were not chargeable, but only receipts for them. And the statute 36 Geo. III. (1796) was afterwards passed, expressly to remedy the defect. The case of *The Attorney General* v. *Manners* was an authority, as far as it went, against the duty; because it would seem that, in that case, if the legacy had been clearly appropriated, the Court would have held the duty not payable. Whether there was an appropriation in that case or not, was not then to be considered. It was the opinion of the Barons, that an executor, who was also a trustee, shifting a legacy from his hands as executor into his hands as trustee, did not thereby appropriate the legacy; and upon this opinion they acted. But if, where a legacy had been paid into Court under a decree, and the trusts were declared accordingly, it was to be said there had been no appropriation, that would be to deny what had never before been called in question.

Then the question was, whether, regard being had to the 25th sect. of the 36 Geo. III., and to the operation of the other clauses of that statute, it could be said to have been the intention of the legislature in the 44 Geo. III. (adopting the former) to make those legacies "given by or derived from persons dying previously to the 27th April, 1796," for which no receipt or discharge could have been given, and which would have been consequently exempt from duty under the prior statutes, liable to the duties there imposed. His Lordship's opinion was that such was not the true construction. Upon the whole, he did not think that, either under the construction of the statutes, or upon the authority of the case in the Exchequer, the legacy could be considered not to have been so effectually appropriated in 1779 as not to be exempt from the operation of any of the Acts (*a*).

The Attorney General v. *Wood* (*b*) was an information against the surviving executor of *William Combes* for the recovery of legacy duty, at 8*l. per cent.*, on 8000*l.* stock. A verdict was taken for the Crown, subject to the opinion of the Court on a case.

The testator gave a sum of 5*l. per cent.* annuities to his executors, upon trust, as to 8000*l.* part thereof, to pay the dividends to *Ann Buckland* for life; and he declared that she should maintain

(*z*) 2 H. B. 30.

(*a*) The judgment is quoted from *Merivale's* report of the case; it is somewhat more fully given in *Price* but to the same effect.

(*b*) 2 Y. & J. 290.

and educate her children thereout, during their minorities; and after the decease of the said *Ann Buckland*, upon trust to divide the said 8000*l.* among her children living at her decease, equally between them, to be transferred on their respectively attaining twenty one. And in case any child should die under that age, the share of such child to go to the survivor; the interest of the shares of those under twenty one to be applied for their maintenance. If there should be no such children of *Ann Buckland*, then, upon trust to pay and transfer the stock to such person, and for such purposes, &c., as she should by any deed, or by her will direct or appoint; and in default of such appointment, then to her next of kin or personal representatives, in equal course of distribution.

The testator died in 1794; in which year the stock was transferred into the names of the executors. *Ann Buckland* died in 1826, when the defendant sold the stock, and retained the produce for the benefit of the three children of *Ann Buckland* then living, all of whom at the time of the filing of the information had attained twenty one. The question was whether this legacy to the children was "paid, delivered, retained, satisfied, or discharged," after the 31st Aug. 1815.

Lord Chief Baron *Alexander* entertained no doubt upon the question. The facts did not, he thought, show that it had been so disposed of; nothing had been done that could bear that construction. It had not been delivered to any body; it had not been satisfied; nor was it at that moment discharged. There was nobody to whom it could be delivered; nobody by whom it could be retained; nobody who could receive satisfaction, or give a discharge for it. It could not be done, and not being capable of being done, it was hardly necessary to say that it had not been done. The whole argument turned upon this, that what was called an appropriation was, according to the meaning of the Act, a delivery, retainer, satisfaction, or discharge. In his opinion, that was very inaccurately argued. His Lordship then referred to *The Attorney General* v. *Manners*. Against that had been cited *Hill* v. *Atkinson*. It was not the case, itself, that could be justly cited against the former decision, for that came under circumstances so strikingly different, that it afforded a marked distinction, and showed that it did not come within the spirit of the Act, but the language found in the report of the case by Mr. *Price*, in which Lord *Eldon* said, that appropriation meant payment. If his Lordship were disposed to give the utmost effect that could be desired to those words, he should not think himself at liberty to consider that which was but

an *obiter dictum*, and not necessary to the decision of the case, an authority sufficient to overrule that which was actually done by this Court upon great consideration. But he did not think, even giving full effect to those words, that such a consequence would follow. All that the Lord Chancellor said was, that a transfer by an executor to himself, as a trustee, was an appropriation of a legacy. For particular purposes, unquestionably, it was an appropriation. It was an appropriation as against many persons, and particularly as against himself. But the question here was, whether the act so done was to be considered as a delivery of the legacy as against the revenue, and this Act of Parliament; whether it was a retainer, a satisfaction, or a discharge. Now the fact was, that it had not been delivered, or retained, or satisfied, or discharged; but the executor and trustee was, at that moment, liable in consequence of having the fund in his hands.

In *Hill* v. *Atkinson*, the executor, or trustee, was actually discharged, as much as if there had been persons in being entitled to give him a legacy receipt, if a receipt were necessary at that time. The money was paid into Court, and distinguished from all the rest of the testator's effects, but above all taken out of the hands of the executor, and paid into Court, under the directions of the Court, for the benefit of the legatees. That, therefore, was an actual payment by the executor, for the use of those persons, whoever they might be. Whether it was a vested interest, or a contingent interest, the executor was discharged, which in the present case he, undoubtedly, was not.

Mr. Baron *Hullock* was of the same opinion. Not one of the words of the Act, "paid, delivered, retained, satisfied or discharged," could be applied to the state of facts that existed anterior to the death of Mrs. *Buckland;* and if that were so, he should say, according to the true construction of the Act, that no legacy duty could attach till that time, and he thought the way in which it was put showed that such ought to be the sound construction of the clause. His Lordship expressed his concurrence in the former case in the Exchequer, and which was, certainly, not, necessarily, touched or affected by the other case cited.

Mr Baron *Vaughan* expressed his concurrence, also, and the verdict was directed to stand for the Crown.

In *Coombe* v. *Trist* (c) the testator, *Richard Trist*, by his will dated 21st May, 1794, bequeathed 10,000*l.* to trustees, who were

(c) 1 M. & C. 69.

also his executors, upon trust, as to one moiety, to pay the annual interest and dividends to *Ann Rogers*, afterwards *Ann Venning*, when she should attain twenty one, and, after her decease, to pay the principal of such moiety to her children, as she should appoint; and, in default of appointment, in trust for all the children equally; and if there should be no children, then as she should appoint; and in default of appointment, for *Sarah Coombe*, and her issue, as therein mentioned. The other moiety he gave upon trusts for *Sarah Coombe* in manner therein mentioned. The testator died soon after the date of his will, but the precise time did not appear. A suit was instituted by the parties interested in the legacy of 10,000*l.*; and in July, 1798, a decree was made, whereby the rights of the plaintiffs, *Sarah Coombe* and *Ann Venning*, in their several moieties of the legacy, were declared, and the usual inquiries and accounts directed. Under this decree the trustees and executors paid into Court 10,000*l.* to answer the legacy; and in pursuance of the order made on further directions, in July, 1800, the stock purchased with a moiety was, previously to November, 1802, carried over to the separate account of *Ann Venning*, who received the dividends till 1834, when she died, without having made any appointment, and leaving eight children. By an order dated the 5th August, 1834, the Accountant General was directed to sell a portion of the fund, and pay the produce to certain of the children who were then of age, but he refused to make such payment without the production of receipts for the legacy duty; and a petition was presented praying that the same might be paid without producing any such receipts, upon which the question of liability to duty was argued; the point being whether this was the case of a legacy given by the will of any person who died before, or upon, the 5th April, 1805, and paid, delivered, retained, satisfied or discharged after the 31st August, 1815.

The Lord Chancellor (Lord *Lyndhurst*) said,—

In *Hill* v. *Atkinson* the legacy was not paid to the party beneficially entitled, nor could it have been so paid without the agreement of the person who had the prior life interest in the fund; but the payment into Court was considered to amount to precisely the same thing.

That would apply in a case, where contingent interests were given; for the Court, in such a case, could, equally, take possession of the capital, at the same time discharging the executor, and holding the fund upon trust for those who had contingent interests, and might become, eventually, entitled. According to the Act of

Parliament the duty is to attach on all legacies paid after a certain day; and the sole question is, whether the legacy was, in this instance, paid before or after a particular day. Now, it is admitted, that the executors, here, paid the entire fund into Court before that day, under the authority of an order, and that the money was, afterwards, transferred into the name of the Accountant General, and invested on the account and for the benefit of the tenant for life; and upon the authority of *Hill* v. *Atkinson*, I consider that proceeding to have been a payment to such parties, whoever they might be, as should become, eventually, entitled to the legacy. The prayer of the petition must, therefore, be granted.

The question in *The Attorney General* v. *Hancock* (*x*) refers rather to the circumstance of the period of the bequest, than that of payment or appropriation. *Samuel Malbon* died in 1791. By his will he gave certain personal estate to his executors, upon trust to lay out the same in land, to be conveyed to trustees to the use of *William Gorst* for life, with remainder to his issue in tail, with remainders over; and, in the mean time, to pay the interest to the persons who would be entitled to the rents. In 1792 and 1793 the money was placed out on mortgage for the benefit of *William Gorst*, the first tenant for life, who, having taken the name of *Malbon*, and survived his co-executor, died in 1826, leaving the defendants his executors. The property had not been laid out in land, but was, in 1832, paid to the person entitled thereto. This information was filed for legacy duty thereon under the 55 Geo. III. c. 184; the defendants pleaded the facts, to which the Attorney General demurred.

It was contended, against the claim, that as the 36 Geo. III. c. 52, was not retrospective in imposing duties on legacies, instead of on receipts, none of the subsequent Acts intended to carry the retrospect beyond the date of that Act; that the subsequent Acts only increased the duties where they were payable before, but did not impose a duty upon a legacy given before the 36 Geo. III. c. 52, and which was, therefore, subject to none; and that as money given to be laid out in land would not, prior to that Act, be, in effect, subject to any duty, it would not be liable to duty under the 55 Geo. III. c. 184, although the legacy was now handed over to the party entitled.

The Court held that, upon a careful examination of the statutes, no such distinction could be found. The 36 Geo. III. c. 52, and

(*x*) 2 M. & W. 563.

the 45 Geo. III. c. 28, (extending the duties to legacies payable out of land,) had, certainly, no retrospect; but the 44 Geo. III. c. 98, s. 12, which continued the duties on receipts for legacies imposed prior to the 36 Geo. III. c. 52, for two years only, imposed duties on all legacies not paid within that period, whether the testator died antecedent or subsequent to 27th April, 1796; that the 55 Geo. III c 184, charged, by retrospect, all legacies paid after the 31st August, 1815, without any exception in favour of an actual interest, for whatever time vested, unless reduced into possession, and the executor exonerated before the last mentioned period. The Court did not consider that, prior to the 36 Geo. III. c. 52, there was any distinction in the liability to duty between the case of money to be laid out in land and other cases of legacies, but that the former Acts contemplated legacies in all cases where receipts were given. See *The Attorney-General* v. *The Marquis of Hertford*, page 681, *ante*.

In Ireland legacies paid out of real estate liable.

Legacy duty is payable in Ireland on legacies charged upon and paid out of real estates, notwithstanding the words of exception in the 54 Geo. III. c. 92, s. 6 (*y*). *David Ker* by his will gave legacies of 30,000*l*. to his daughters, and he devised certain real estates to trustees upon trust to raise out of the rents and profits such a sum as, with the residue of his personal estate, should be sufficient to pay the said legacies. It was objected that so far as the legacies were paid out of real estate they were not liable to duty. They were held, however, by the Master of the Rolls, and by the Lord Chancellor (Sir *Edward Sugden*), on appeal, to be liable (*z*).

Whether money belonging to deceased charged on his own land is real or personal estate.

Where a testator was at the time of his death seised of real estate which descended to him as heir at law, and became, also, absolutely entitled, under a settlement, to certain charges thereon, although on a question between the devisee of the real estate and the residuary legatee, or next of kin, the devisee might be held to be entitled to the land free from the charges, it does not follow, as a matter of course, that such charges were wholly extinguished so as not to constitute part of the personal estate of the deceased upon which legacy duty is payable by the devisee. See the case of *Swabey* v. *Swabey* (*a*).

Where probate is revoked, legacy duty

By the 37th sect. of the 36 Geo. III. c. 52, it is provided that where the authority under which any person shall have adminis-

(*y*) See this Act in the "APPENDIX," and the remark thereon.

(*z*) *Cleland* v *Ker*, 6 Ir. Eq. Rep. 35 & 288; see also page 3, *ante*.

(*a*) 12 Jur. 688.

tered the estate of the deceased shall be void, or be repealed or declared void, any duty which shall have been paid by him, and which shall not be allowed out of the estate, shall be repaid. A testator gave all his real and personal estate to three persons, strangers in blood, whom he appointed executors. These parties all proved the will and paid the legacy duties on the personal estate. Afterwards an ejectment was brought for the land by the heir at law, and a suit was instituted by the next of kin to set aside the probate. The heir at law recovered a verdict in the action, on the ground of the insanity of the testator; but a rule *nisi* for a new trial having been obtained, the parties all came to a compromise, under which the probate was revoked, and letters of administration were granted to the next of kin, the personal property being divided between the executors and the next of kin and the money paid for duty assigned to the latter. The Commissioners offered to return the duty on so much of the property as was actually handed over to the administratrix, but not on that which was retained by the executors. The Court of Queen's Bench, however, on arguing a rule for a mandamus, thought that the case was within the section alluded to. This expression of opinion was sufficient to satisfy the Commissioners, and the rule was not made absolute (*b*).

Paid is to be returned.

The legatee, whether of a sum in gross or an annuity, or otherwise, whose beneficial interest is satisfied without any deduction for legacy duty, is liable to make good to the trustees or executors any money that they are afterwards called upon to pay for such duty.

A legatee is liable to repay to a trustee the duty paid by him.

Hales v. *Freeman* (*c*) was an action by trustees of land charged with an annuity, against the annuitant, to recover the amount of the legacy duty which they had paid on the annuity eight years after the death of the testatrix, and several years after the defendant had sold the annuity, covenanting that it was free from incumbrance.

It was objected that the duty should have been deducted from the annuity during the first four years, according to the 36 Geo. III. c. 52, and that the payment afterwards must be looked upon as voluntary; that it was like land tax which must be deducted within the current year. But the Court held otherwise; and that the defendant was liable to reimburse the trustees; the statute

(*b*) *The Queen* v. *The Commissioners of Stamps and Taxes*, 6 A. & E. (N. S.), 657.

(*c*) 1 B. & B. 391; 4 Moore, 21.

made the legatee, himself, as well as the trustee, a debtor, which put by all the argument as to the four years.

This case was alluded to in *Stow* v. *Davenport* (*d*) as an authority for the owner of an estate, charged with an annuity, recovering the duty from the annuitant, where the annuity was not given free from duty.

The same was also determined in *Foster* v. *Ley* (*e*); where the defendant received what was considered to be a legacy, from the Court of Chancery, and where the plaintiffs, the executors, had been called upon to pay, and had paid the duty on such legacy after it had been so received out of Court. Two objections were raised in the case; one that the matter had been before the Court of Chancery, which ought to have provided for the duty if it was payable, (36 Geo. III. c. 52, s. 25); and the other, that the money ought to be paid free of duty, or the desire of the testatrix would be frustrated, she having by her will directed her first husband's debts, for which she was not responsible, to be paid out of her estate, and the money received by the defendant being one of them. The Court held that the circumstance of the Court of Chancery having omitted to provide for payment of the duty did not prevent the question from being settled in another form; and that the party having accepted the legacy it must be *cum onere*.

Bate v. *Pane* (*f*) was an action by an executor against the person to whom a leasehold estate had been bequeathed, subject to a prior life interest of the widow therein, for recovery of the legacy duty on the property and on the rents accrued after the widow's death, which the executor had been called upon to pay and had paid fifteen years after the death of the widow, and after possession had been taken by the defendant. It was objected, first, that by sect. 6 of the 36 Geo. III. c. 52, the legacy duty became a debt to the Crown jointly from the executor and the legatee; and, secondly, that the action would not lie for the excess, inasmuch as the executor could not make his own laches the ground of an implied promise. The Court held that this was money paid for the use of the defendant The legatee had sustained no harm; he received more than he was entitled to, *viz.*, the whole; and he had received the interest of the principal during the time, without any deduction. The liability imposed by the 6th sect. was a double, not a joint, liability.

(*d*) *Ante*, page 675.
(*e*) 2 Bing (N. C.) 269; 1 Hodges, 326.
(*f*) 13 Jur. 609.

T. L., being entitled to three-fifths of the purchase-money to arise from certain real estate directed to be sold on the death of *J. B. C.* without issue, by his will made *W. T. L.* his residuary legatee, and *G. F.* and others his executors, and died in 1814. In 1828, *W. T. L.* agreed to sell his reversionary interest in the purchase-money to *J. H S.*, for 6850*l.* "subject to every incumbrance that could or might by any possibility affect it at law or in equity"; and an assignment of such interest was duly executed by *G. F.* (who received the purchase-money) by the direction of *W. T. L.* In 1836 the estate was sold by auction, *J. H. S.* becoming the purchaser, to whom 9405*l.* 14*s.* 10*d.* was paid, or allowed, in respect of three-fifths of the net purchase-money. In 1846 the Commissioners of Stamps and Taxes obliged *G. F.*, the executor of *T. L.*, to pay the legacy duty on such three-fifths, who filed his bill in Chancery against the executors and trustees under the will of *J. H. S.*, the purchaser of the legacy and of the estate, and his residuary legatee, who was also the devisee of the estate, praying that the legacy duty might be declared to be a charge on the land sold, or be paid out of the assets of *J. H. S.* The Vice-Chancellor *Knight Bruce*, without considering what difference it would make were it otherwise, was of opinion that he could not treat the defendants as bound or affected by the words "subject to every incumbrance," &c., having regard to the date of the assignment, the time of the reversion falling in, and the circumstance of the death of *J. H. S.* before the suit was instituted. It seemed to be agreed that the legacy duty was not thought of by any of the parties; and, under the circumstances, his Honour could not consider *G. F.* as having a better equity, in respect of the unlucky transaction, than those who represented *J. H. S.*; and he, therefore, dismissed the bill, but without costs (*g*).

An executor held to have no better equity than a purchaser in such a case.

The validity of a transaction cannot be impugned on the ground that it was effected with the view to avoid the payment of legacy duty. But in an action on a promissory note (*h*), where the consideration became a question, *Abbott*, C. J., was of opinion that the intention to avoid the legacy duty would not be sufficient, for then the note would not be payable until after the donor's death, and a promissory note was not good as a *donatio mortis causâ*.

Legality of proceedings to avoid legacy duty.

In a previous case, *Woodbridge* v. *Spooner* (*i*), an objection that a promissory note given in lieu of a legacy was void, as in fraud of

(*g*) *Farwell* v *Seale*, 18 L. J. R. C. 501.
(N. S.) Chan. 189; 13 Jur. 483.
(*h*) *Holliday* v. *Atkinson*, 5 B. & (*i*) 1 Chitty, 661.

the legacy duty, does not appear to have met with any attention from the Court.

Practice.

The ordinary mode of proceeding for the purpose of obliging an executor or administrator to settle his account with the Commissioners of Inland Revenue is by a rule of the Court of Exchequer, under the 42 Geo. III. c. 99, s. 3, by which he is called upon to show cause why he should not deliver to the Commissioners an account, upon oath, of all the legacies and personal property respectively paid, or to be paid or administered by him, and why the duties should not be forthwith paid according to law; which rule, if no cause be shown within eight days after the service, is made absolute, upon motion for that purpose. The rule absolute requires the party, within eight days after the service thereof, to deliver the account to the Commissioners, and pay the duties that may be due thereon, together with the costs (*k*) of the proceedings. In default of this, the next step is a rule *nisi* for an attachment, which rule becomes absolute in eight days from the service, if no cause be shown (*l*). The attachment, of course, is not bailable; the party, therefore, if arrested, must go to prison and remain there until he settles his account with the Commissioners, or they should think proper to discharge him.

The convenience of this process to the Crown, as well as the advantage of it to the party, is manifest, the alternative being either an action or a suit in the Exchequer by the Attorney General. If only one or other of these latter modes of proceeding were available, it would, of course, be quite impossible to collect the duties.

In cases where there exists any real or supposed objection to complying with the requisition of the Commissioners for payment of legacy duty, a clear and distinct understanding has, generally, been arrived at, by means of the communications that have taken place between the Office and the parties, or their solicitors; it rarely happens, therefore, that proceedings are instituted, or, if begun, continued, where they are open to a satisfactory answer; but if occasion should arise for opposing the summary process obtained by the Board, the course is for the party to file an affidavit at the office of the Queen's Remembrancer, and deliver a brief to counsel to show cause against the rule; and he must take care to produce an office copy of the affidavit, or that the original is in court (*m*). There need be no haste, however, in delivering the

(*k*) *Re Robinson*, *post*, page 716. (*l*) *Re Vivian*, *post*, page 716.
(*m*) *Re Jeffery*, 1 Cro. & J. 71.

brief, as the filing of the affidavit, and giving notice of it to the Solicitor of Inland Revenue will be sufficient to delay any application to make the rule absolute; and it will be impossible to instruct the Attorney and Solicitor General in the case on the instant. The solicitor for the parties should, on filing his affidavit, immediately put himself in communication with the Board's Solicitor; indeed it will be advisable that he do so before, in order that an arrangement be made for bringing the matter before the Court; besides, it might so happen that the affidavit discloses a satisfactory answer, or, at all events, sufficient to induce the Commissioners to forego the further proceedings, in which case a proper understanding may have the effect of saving much expense as well as trouble.

The ready and inexpensive course of the ordinary rule is a convenient mode of obtaining the opinion of the Court on a point of law, in a case which will not admit of the delay and expense of a more circuitous way of arriving at a judicial decision; and, therefore, this method is adopted occasionally, by consent; the facts being previously agreed upon, and stated by affidavit.

The writer is anxious to inculcate, that, whenever a serious objection to the proceedings, or the necessity for discussing any grave question arises, every disposition will be shown on the part of the Office to meet the matter fairly, and to concur, in good faith, in any desirable mode for bringing the case before the proper tribunal.

Rule to account against the executor of an executor.

An executor of an executor is a person against whom a rule may be obtained under the 42 Geo. III. c. 99, s. 2, to account for the estate of the original testator and pay the duties thereon. In the case *In re Pigott* (*n*) the party called upon to account was a surviving representative three times removed, *viz.*, he was the surviving executor of *Jane Mumby*, who was the executrix of *Joseph Mumby*, the executor of *John Pigott*, of whose estate an account was required. He made an affidavit stating that his co-executor, since dead, alone administered the effects of *Jane Mumby*, and that he himself had not interfered except by signing documents, and that no assets of *Jane Mumby* or *John Pigott* ever came to his hands. The Court seemed to think that it was not reasonable that this party should, at such a distance of time, and under such circumstances, be subject to this summary proceeding; he had disclosed a satisfactory answer to it; and, in the

(*n*) 1 C. & M. 827, 3 Tyr. 859.

exercise of the discretion which the Court considered that it possessed, the rule absolute was refused.

The facts of this case were not properly before the Court, or the rule, probably, would not have been refused; at all events the refusal was no mercy to the party sought to be charged, as the Attorney General, on being made acquainted with the particulars, immediately filed an English Information against him, and obliged him to discharge, with costs, a claim which was, under circumstances not appearing in the report of the case, founded in justice.

Chancery suit no answer to a rule where legacies have been paid.

The fact of a Chancery suit being instituted for administering the estate of the deceased is no answer to a rule obtained against an executor for an account, so far as the assets have been received and applied in payment of legacies; the Crown is not obliged to await the termination of a Chancery suit for an account of such legacies as have been paid, and from which the executor should have deducted the duties (*o*).

Costs of proceedings to be paid with the duties.

It being provided by the 53 Geo. III. c. 108, s. 23, for better securing the duties under the Commissioners of Stamps, that in all proceedings for the recovery thereof it should be lawful for His Majesty to have and recover such duties with full costs of suit, and all charges attending the same, it was arranged, in the case of *Robinson* deceased (*p*), that it should form part of the rule that if, upon the delivery of the account, any duty should be found to be payable, the representatives should pay the costs of the proceedings, to be taxed in the usual manner.

Attachment for not obeying rule.

A rule *nisi* for an attachment against a person for not obeying a rule calling upon him to render the usual account becomes absolute by a day certain, (eight days after the service,) if no cause be shown (*q*).

Application against an attorney to pay over money to the Stamp Office.

Where the attorney of a deceased executor had, in an account found amongst the executor's papers, debited himself with a sum of money as received on account of the estate, and taken credit for a sum as paid at the Stamp Office for legacy duty, but which had not been paid, the Court refused a rule, applied for by the Attorney General, against the attorney to show cause why he should not pay over to the Receiver General of Stamps and Taxes the amount so taken credit for, the application not being made on the part of the client (*r*).

Legacy paid

Where a legacy had been paid into the Court of Chancery under

(*o*) *Re Ann Sammon*, 3 M. & W. 381.

(*p*) 2 M. & W. 407; 5 Dow 609

(*q*) *Re Vivian*, 1 Cro. & J. 409.

(*r*) *Re Fenton*, 5 N. & M 239

the 36 Geo. III. c. 52, s. 32, and invested in stock, the Vice-Chancellor considered that he had no power, on the application of the legatee, on coming of age, to direct the stock to be sold, but that he could only order it to be transferred; but if the Accountant General had no objection he would, if desired, make an order for selling the stock and paying out the produce (*s*). An order was subsequently made as prayed.

into Court under Legacy Duty Act.

Questions of succession, and of precatory trust, are of a general character, and although proceedings, involving questions of the kind, have been instituted solely for the purpose of probate or legacy duty, no object, in reference to such duties, is answered by setting forth the cases; the writer will, therefore, merely refer to two cases on the points mentioned, determined in regard to duties only. See *The Attorney General* v. *Malkin*, 2 Phil. 64, 1 Cooper, 237, and 16 L. J. R. (N. S.) Chan. 99; and *White* v. *Briggs*, 15 Sim. 33, and 15 L. J. R. (N. S.) Chan. 182.

Succession. Precatory trust.

The question whether or not a legacy is given free of duty, is one between the persons entitled to the residue, or to the estate charged, and the legatee, rather than between the Crown and the parties; as it is presumed that no provision made by the testator, as to who shall ultimately bear the burden of the tax, can affect the right of the Crown to recover the duty from any of the persons expressly declared by the Act of Parliament to be liable, *viz.*: the executors, trustees, and owners of the property charged, respectively, in all events; and also, the legatees, if the legacies happen to be paid to them without deducting the duty. No questions, therefore, as to the effect of words in a will tending to relieve the legatee from the duty, have arisen in proceedings for the recovery of legacy duty; it may be expected, however, in a work of this description, that some reference be made to the cases upon the subject.

Legacies free of duty.

The following expressions in wills have been held to extend to legacy duty, and, therefore, to entitle the legatees to receive the full sums given to them without any deductions for duty, *viz.*:—"without any deduction" (*t*), "clear of property tax and all expenses whatsoever attending the same" (*u*), "free from all expense" (*x*), "to be paid clear" (*y*). Some distinction has been attempted to be made between legacies and annuities. There can

(*s*) *Ex parte Bromhed*, 13 Jur. 113.

(*t*) *Barksdale* v. *Gilhatt*, 1 Swan. 562.

(*u*) *Courtoy* v. *Vincent*, 1 Turn. & Russ. 433.

(*x*) *Gosden* v. *Dotterill*, 1 M. & K. 56.

(*y*) *Ford* v. *Ruxton*, 1 Coll. 403.

be no doubt as to the terms "clear of all taxes and deductions" and similar ones (*z*); but although the words "without any deduction," and "without any deduction or abatement," have been held to apply to legacy duty in the cases of annuities, as in *Smith* v. *Anderson* (*a*), and *Dawkins* v. *Tatham* (*b*), yet it has been inferred from the judgment of Lord *Eldon* in *Barksdale* v. *Gilliatt*, that a direction to pay annuitants "without deduction" would not extend to legacy duty, if from the nature of the property there were other deductions to which the direction might be referred. But see the observation of the Master of the Rolls in *Smith* v. *Anderson;* and Lord *Brougham's* commentary on this observation in *Louch* v. *Peters;* and also Mr. Baron *Alderson's* remarks in *Gude* v. *Mumford* (*c*), in which it was held that the gift of "*one annuity or clear yearly sum of* 100*l.*" charged upon the testator's lands, was intended to free the annuity from the duty.

Some doubt might also arise from the case of *Hales* v. *Freeman* (*d*), where an annuity was given "clear of all deductions," in which it was determined that the annuitant was bound to reimburse the trustees the amount of the legacy duty. Upon this case the Master of the Rolls observed, also, in *Smith* v. *Anderson*, that the words (although less strong than in that case) might have raised a similar question, but that they were not noticed by the bar, or the bench, the argument and decision proceeding on a different ground.

In *Saunders* v. *Kiddell* (*e*) the testatrix bequeathed to trustees such a sum of money as that the annual proceeds thereof, when invested, would produce the *clear* yearly sum of 500*l.*, upon trust to invest the same and to pay the produce to certain relatives for life, and after their deaths the principal to be divided as therein mentioned, a share of which might devolve on a person standing in a different degree of relationship to the testatrix, or on a stranger in blood. The Vice-Chancellor held that the word "*clear*" must be taken to refer not to the legacy duty but to the expenses of investment, and so on.

In *Calvert* v. *Sebbon* (*f*), the testator directed his executors within three months after his decease to invest a sum to produce

(*z*) *The Attorney General* v. *Jackson*, page 657, *ante*, *Stow* v. *Davenport*, page 675, *ante*. *The Attorney General* v. *Pickard*, page 676, *ante*; *Louch* v. *Peters*, 1 M. & K. 489.

(*a*) 4 Russ 352.

(*b*) 2 Sim. 492.

(*c*) 2 Younge & Col. 448.

(*d*) 1 B. & B. 391; and *ante*, page 711.

(*e*) 7 Sim. 536

(*f*) 2 Keen, 672.

200*l.* a year, clear of the legacy duty and all other deductions; to pay the interest to *Sarah Morris*, or her appointees for her life, and after her death the principal money as therein mentioned. All the parties were strangers in blood to the testator.

It was objected that the life estate of *Sarah Morris*, only, was free from legacy duty. The Master of the Rolls held otherwise; the legacy duty was payable at once, as on an absolute bequest, and when paid, no part could be called back again.

Sir *H. C. Lippincott* by his will gave certain legacies to charities, to be paid out of his personal estate before debts and other legacies. He directed all his legacies to be paid within two years after his death, free of any deduction for tax or duty. By codicil, he gave another legacy to be paid immediately after his decease, and by a second codicil, another legacy "raisable immediately." It was held under the circumstances that these latter legacies were free of duty (*g*).

Stock not exempt under "pecuniary legacies."

George Douglas by his will gave 50,000*l.*, 3*l.* per Cent. Consols; and after bequeathing a variety of specific and pecuniary legacies, he directed that the duty upon all the pecuniary legacies therein before given should be paid out of his general personal estate. It was held that the bequest of stock was not free from duty as a pecuniary legacy (*h*).

But where a testatrix having directed her trustees to stand possessed of the residue of her estate, in trust to appropriate and set apart certain sums of stock, for purposes specified, bequeathed several legacies, and directed that all such several legacies, as well as any thereinafter given, should be paid immediately after her decease, and free of legacy duty, the Lord Chancellor said, that although it was not quite certain what the testatrix meant, yet she had used words sufficient to comprehend all the legacies; and he held the stock legacies to be free of duty (*i*).

Where by a codicil a legacy is given in substitution for one which was given free of duty by the will, the substituted legacy, being taken attended with the same incidents, is also free of duty (*k*). But not where the legacy is given by the codicil to a different person in consequence of the former having lapsed by the death of the

(*g*) *Byne* v. *Currey*, 2 C. & M. 603.

(*h*) *Douglas* v. *Congreve*, 1 Keen, 410.

(*i*) *Ansley* v. *Cotton*, 16 L. J. R. (N. S.) Chan. 55.

(*k*) *Cooper* v. *Day*, 3 Mer. 154; *The Earl of Shaftesbury* v. *The Duke of Marlborough*, 7 Sim. 237.

legatee (*l*). Nor where the gift by the codicil is a complete gift altogether, separate and distinct from that in the will; as in *Burrows* v. *Cottrell* (*m*), where the testator by his will gave an annuity of 300*l.* a year to his two sisters *Isabella* and *Harriet*, during their joint lives, free from all taxes and stamp duties, and after the death of the survivor to another, if she should be living, and by a codicil he revoked the said annuity and gave his two sisters a *clear* annuity of 100*l.* each, with benefit of survivorship. The Vice-Chancellor held that these latter annuities were subject to legacy duty. (See the subsequent case of *Gude* v. *Mumford* (*n*) as to the word "clear.")

In *Noel* v. *Lord Henley* (*o*) a legacy was given out of real estate; and in a subsequent part of the will was a direction that all the legacies given by the will should be paid in full, without any deduction for the legacy duty; the Court held that the duty on this particular legacy must be paid out of the same fund, and not out of the personalty, the exemption from the duty being an augmentation of the legacy

In *Early* v. *Benbow* (*p*) where the duties on legacies bequeathed by the will were directed to be paid out of a particular fund, it was held that other legacies, given by the codicil, were not free from duty.

(*l*) *Chatterus* v. *Young*, 2 Russ. 183.
(*m*) 3 Sim. 375.
(*n*) Page 718, *ante*.
(*o*) 7 Price, 241.
(*p*) 10 Jur. 280.

Table of Stamp Duties

PAYABLE THROUGHOUT THE UNITED KINGDOM

AFTER THE 10TH OF OCTOBER, 1854.

IN TWO PARTS.

PART THE FIRST:

Containing the Duties on ADMISSIONS to Offices, &c; on Instruments of CONVEYANCE, CONTRACT, OBLIGATION and SECURITY for Money; on DEEDS in general; and on other INSTRUMENTS, matters and things, not falling under the following head.

NOTE.—In this part are included such of the duties contained in the first and second parts of the 55 Geo. III. c. 184, as are still payable.

PART THE SECOND:

Containing the Duties on PROBATES of Wills and Letters of ADMINISTRATION; on CONFIRMATIONS of Testaments, testamentary and dative; on INVENTORIES to be exhibited in the Commissary Courts of Scotland; on LEGACIES out of real or personal, heritable or moveable estate; and on SUCCESSIONS to personal or moveable estates upon intestacy; being the duties contained in the third part of the Schedule to the 55 Geo. III. c. 184. And containing, also, the Duties on SUCCESSIONS granted by the 16 & 17 Vict. c. 51.

NOTE.—The Schedule to the General Stamp Act in Great Britain, 55 Geo. III. c. 184, has been taken as the foundation of this Table, the terms being extended to Ireland in conformity with the Assimilation Act (*a*); where, therefore, no reference is made to any other statute, it is to be understood that the item of duty, or the exemption, is to be found in that schedule. The language of the Acts granting the duties has been in all cases carefully preserved, the word "TABLE," wherever it is to be met with, being substituted for that of "SCHEDULE."

PART I.

	Duty. £	s.	d.
ACKNOWLEDGMENT, WRIT of.—See WRIT OF ACKNOWLEDGMENT.			
ADMISSION of any person to act as an advocate in any of the Ecclesiastical Courts in England or Ireland, or in the High Court of Admiralty in England, or the Court of Admiralty in Ireland, or in any of the Courts of Justice in Scotland . . .	50	0	0
Exemption from the preceding and all other Stamp Duties:			
Where an advocate admitted in one Court in England or Ireland shall be admitted as an advocate in any other Court in England or Ireland respectively, or being admitted in one Court in Scotland shall be admitted as an advocate in any other Court in Scotland; his latter admission shall be free of duty, provided he			

(*a*) 5 & 6 Vict. c. 82.

	Duty. £ s. d.
ADMISSION—*continued.* *shall have paid the proper stamp duty on his former admission, according to the laws then in force.*	
ADMISSION of any person to the degree of a barrister-at-law in either of the Inns of Court in England or Ireland, for the register or entry thereof	50 0 0
ADMISSION of any person to act as an attorney, solicitor, or proctor in any Court in England or Ireland, or as a sworn clerk, side clerk, clerk in court, or other clerk or officer in any Court in England or Ireland, whose business and emoluments (like those of an attorney or solicitor) shall depend upon his being retained and employed by clients or suitors, and shall therefore be wholly uncertain in amount	25 0 0
Exemptions from the preceding and all other Stamp Duties: *Where any person duly admitted an attorney in either of Her Majesty's Courts at Westminster, or in either of the Courts of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or in any of Her Majesty's Courts in Ireland, shall be also admitted to act as an attorney in any other of the said Courts, or in any inferior Court of Law, or as a solicitor in any Court of Equity, in England or in Ireland, respectively, the latter admission shall be free of duty.* *And where any person duly admitted a solicitor in the Court of Chancery or Exchequer at Westminster, or in either of the Courts of the Great Sessions in Wales, or of the Duchy of Lancaster, or of the Counties Palatine of Chester, Lancaster, and Durham, or in the Court of Chancery or Exchequer in Ireland, shall be also admitted to act as a solicitor in any other of the said Courts, or in any inferior Court of Equity, or as an attorney in any Court of Law in England or in Ireland, respectively, the latter admission shall be free of duty.* *Provided such attorney or solicitor shall have paid the proper stamp duty on his former admission, according to the laws then in force.* But in all cases not expressly exempted, the said duty is to be paid on every admission of the same person.	
ADMISSION of any person to act as writer to the signet, or as a solicitor, agent, attorney, or procurator, in any Court in Scotland, or as a clerk or officer in any Court in Scotland, whose business and emoluments (like those of a solicitor) shall depend upon his being retained and employed by clients or suitors, and shall therefore be wholly uncertain in amount	25 0 0
And where any person shall be admitted to act as a solicitor or agent in the Court of Session, Justiciary, or Commission of Teinds in Scotland, who shall not have served a clerkship or apprenticeship for five years to a writer to the signet, or to a solicitor or agent, under regular articles or indentures of clerkship or apprenticeship which shall have paid the stamp duty payable by law for the same at the date thereof, his admission shall be charged with a *further* duty of . . .	60 0 0
And where any person shall be admitted to act as a procurator or solicitor in the High Court of Admiralty in Scotland, the Commissary Court at Edinburgh, or any inferior Court in Scotland, who shall not have served a clerkship or apprentice-	

	Duty. £	s.	d.
ADMISSION—*continued.*			
ship for five years to a writer to the signet, or to a solicitor, agent, or procurator, under regular articles or indentures of clerkship or apprenticeship, which shall have paid the stamp duty payable by law for the same at the date thereof, his admission shall be charged with a *further* duty of . .	30	0	0
Exemptions from the preceding and all other Stamp Duties.			
Where any person duly admitted a writer to the signet, or a solicitor, agent, or attorney, in either of the Courts of Session, Justiciary, Exchequer, or Commission of Teinds, shall be also admitted to act in either of those capacities in any other or others of the same Courts, his latter admission shall be free of duty.			
Where any person duly admitted as a solicitor or procurator in the High Court of Admiralty, or in the Commissary Court at Edinburgh, shall be also admitted a solicitor or procurator in the other of those Courts, his latter admission shall be free of duty.			
And where any person duly admitted a solicitor or procurator in any of the inferior Courts in Scotland shall be also admitted a solicitor or procurator in any other or others of the same Courts, his latter admission shall be free of duty.			
Provided in each of the foregoing cases the proper stamp duty shall have been paid on the former admission of such person, according to the laws then in force.			
But in all cases not expressly exempted the said duty is to be paid on every admission of the same person.			
ADMISSION of any person as a master in ordinary in Chancery, or as one of the six clerks, or one of the cursitors of the Court of Chancery in England or Ireland, or as a sworn clerk, side clerk, clerk in court, or other clerk or officer whatsoever in any Court in Great Britain or Ireland, who must necessarily be employed to do certain official business, and whose emoluments shall therefore be so far fixed and certain;			
Where the salary, fees, and emoluments of the office or appointment shall not amount to 50*l.* per annum . . .	2	0	0
And where the same shall amount to 50*l.* and not amount to 100*l.*	4	0	0
——— 100*l.* ——— 200*l.*	6	0	0
——— 200*l.* ——— 300*l.*	12	0	0
——— 300*l.* ——— 500*l.*	25	0	0
——— 500*l.* ——— 750*l.*	35	0	0
——— 750*l.* ——— 1000*l.*	50	0	0
——— 1000*l.* ——— 1500*l.*	75	0	0
——— 1500*l.* ——— 2000*l.*	100	0	0
——— 2000*l.* ——— 3000*l.*	150	0	0
——— 3000*l.* or upwards per annum. .	200	0	0
The said fees and emoluments to be estimated according to the average amount thereof for three years preceding, if practicable; and if not, according to the best information that can be obtained.			
Exemptions from the preceding and all other Stamp Duties.			
Where any officer shall be admitted annually, every admission after the first shall be free of duty, provided the proper duty shall have been paid on his first admission.			

	Duty. £	s.	d.
ADMISSION—*continued.*			
All admissions of officers proceeding upon any grants of or appointments to offices which shall be charged with the duties hereinafter mentioned.			
But in all cases not expressly exempted the proper duty is to be paid on every admission of the same person.			
ADMISSION of any person to act as a notary public.—See FACULTY.			
ADMISSION of any person to be a member of either of the four Inns of Court in England, or of the Inns of Court in Ireland . .	25	0	0
Where a person is admitted both a member of an Inn of Court in England and a student of King's Inns, in Dublin, the duty on the former admission will be returned on application within six months after the last admission. 5 & 6 Vict. c. 79, s. 22.			
Exemption.			
Where any person admitted a member of any one of the said Inns of Court in England shall afterwards be admitted a member of any other of the said Inns, the latter admission shall be free of duty; provided he shall have paid the proper stamp duty on his former admission, according to the laws then in force. 5 & 6 *Will. IV. c.* 64, *s.* 7.			
ADMISSION of any person to be a member of either of the societies commonly called Inns of Chancery in England . .	3	0	0
ADMISSION of any person to be a fellow of the College of Physicians in England, Scotland, or Ireland	25	0	0
ADMISSION or license of any person by the College of Physicians in England, Scotland, or Ireland, to exercise the Faculty of Physic, or practise as a licentiate	15	0	0
ADMISSION or matriculation of any person in any of the Universities in England or Ireland	1	0	0
ADMISSION of any person to the degree of a Bachelor of Arts in any of the Universities in England or Ireland, for the register or entry thereof,			
If conferred in the ordinary course of the University . .	3	0	0
If conferred by special grace, or royal mandate, or by reason of nobility or otherwise out of the ordinary course . .	5	0	0
ADMISSION of any person to any other degree in any of the Universities in England or Ireland, for the register or entry thereof,			
If conferred in the ordinary course of the University . .	6	0	0
If conferred by special grace, or royal mandate, or by reason of nobility, or otherwise out of the ordinary course, conferring any right of election in such University . . .	10	0	0
ADMISSION of any person to the degree of Doctor of Medicine in either of the Universities in Scotland . . .	10	0	0
NOTE.—The said hereinbefore mentioned duties on admissions are, in all cases not expressly provided for, to be charged on the instruments of admission, delivered to the persons admitted, by whatsoever name the same may be called, if there be any such, or if not, on the register, entry, or memorandum of each admission in the rolls, books, or records of the court, college, inn, or society in which the admission shall be made, or for want thereof on the rescript or warrant for such admission.			

	Duty. £	s.	d.
ADMISSION of any person as a burgess, or into any corporation or company in any burgh in Scotland; for the enrolment, entry, or memorandum thereof in the court books, roll, or record of such corporation or company . . . . . 9 Vict. c. 17, s. 1.	0	5	0
ADMISSION of any person into any corporation or company in any other city, borough, burgh, or town corporate in Great Britain or Ireland, for the register, entry, or memorandum thereof in the court book, roll, or record of such corporation or company;			
Where the admission shall be in respect of birth, apprenticeship (*a*), or marriage	1	0	0
And where the same shall be upon any other ground . .	3	0	0

Exemptions from the preceding and all other Stamp Duties.

The admissions of craftsmen or others entering in any corporation, within any Royal Burgh, Burgh of Regality, or Burgh of Barony in Scotland, incorporated by the magistrates and council of such burgh; provided such craftsmen or others shall have been previously admitted freemen or burgesses of the Burgh, and have paid the proper stamp duty on such admission, according to the laws then in force.

Further Exemptions.

The admission, registry, or enrolment of any burgess, according to the provisions of the Act for the Regulation of Municipal Corporations in England and Wales. 5 & 6 *Will. IV. c.* 76, *s.* 22.

The admission of any person entitled to take up his freedom by birth, or servitude, in any city or borough in England returning a member or members to serve in Parliament. 1 & 2 *Vict. c.* 35. *See, also, Note, page* 14, *ante.*

The admission, registry, or enrolment of any burgess or freeman, under the Act for the Regulation of Municipal Corporations in Ireland. 3 & 4 *Vict. c.* 108, *s.* 48.

ADMISSION to Ecclesiastical Benefices in Scotland.—See COLLATION.

ADMISSION or admittance to Copyhold Lands.—See COPYHOLD.

ADVOCATE.—See ADMISSION.

AFFIDAVIT to be filed, read, or used in the High Court of Admiralty; or in the Courts of the Cinque Ports, exercising admiralty jurisdiction; the High Court of Appeal in prize causes; or the High Court of Delegates in admiralty matters, in England or Ireland; (*not being in any suit.* 5 *Geo. IV. c.* 41) . . .	0	5	0
AFFIDAVIT to be filed, read, or used in any Ecclesiastical Court, or in the High Court of Delegates in Ecclesiastical matters, in England or Ireland; (*not being in any suit.* 5 *Geo. IV. c.* 41) . . 55 Geo. III. c. 184, schedule, part 2,—England. 5 & 6 Vict. c. 82,—Ireland.	0	5	0

AFFIDAVIT not made for the immediate purpose of being filed, read, or used in any Court of Law or Equity, or before any Judge or Master or other officer of any of the said Courts; or before the Lord High Chancellor, or the Lord Keeper, or Commissioners of the Great Seal, sitting in matters of bankruptcy, or lunacy; for every

(*a*) Or trading, in Ireland, 2 & 3 Will IV. c. 91.

	Duty. £	s.	d.
AFFIDAVIT—*continued.*			
sheet or piece of paper, parchment, or vellum, on which the same shall be written or printed	0	2	6
55 Geo. III. c. 184, schedule, parts 1 and 2.			
5 Geo. IV. c. 41; 4 & 5 Vict. c. 34.			
Exemptions from the preceding and all other Stamp Duties.			
Affidavits required or authorized by law, to be made before any Justice or Justices of the Peace, or before any Commissioner or Commissioners of any public Board of Revenue, or any of the officers acting under them, or before any other Commissioner or Commissioners appointed or to be appointed by Act of Parliament.			
Affidavits to be made pursuant to the Act of the 48 Geo. III. c. 149, by persons intromitting with the personal or moveable estate or effects of persons deceased in Scotland.			
Affidavits to be made by persons applying for probates of wills and letters of administration in England or Ireland, regarding the value of the estate and effects of the deceased.			
Affidavits which may be required at the Bank of England, or the Bank of Ireland, to prove the death of any proprietor of any share in any of the stocks or funds transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stocks or funds.			
Also all Affidavits relating to the loss, mutilation, or defacement of any bank note or bank post bill.			
Affidavits by persons for the purpose of registering themselves as voters under the 2 & 3 Will. IV. c. 88, to amend the representation of the people of Ireland. 4 & 5 Will. IV. c. 57, s. 3.			
See also the General Exemptions at the end of this part of the Table.			
AGENT.—See ADMISSION—CERTIFICATE.			
AGREEMENT or contract, accompanied with a deposit of title deeds, for making a mortgage, wadset, or other security on any estate or property therein comprised.—See MORTGAGE.			
AGREEMENT, or any minute or memorandum of an agreement, made in England or Ireland, under hand only, or made in Scotland without any clause of registration (*and not otherwise charged nor expressly exempted from all Stamp Duty* (*a*)), where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or indorsed thereon or annexed thereto	0	2	6
And where the same shall contain 2160 words, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words a further *progressive* duty of .	0	2	6
13 & 14 Vict. c. 97.			
Provided always, that where divers letters shall be offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of 1*l.* 15*s.*, although the same			

(*a*) (*Not charged otherwise than under the head* AGREEMENT *in the Schedule to the* 55 *Geo III* c. 184, *nor expressly exempted from all stamp duty*). These are the words in the 13 & 14 Vict c 97, but the meaning is properly conveyed by the words in the text.

AGREEMENT—*continued.* Duty. £ s. d.

shall in the whole contain twice the number of 1080 words or upwards (*a*).

Exemptions from the preceding and all other Stamp Duties.

Label, slip, or memorandum containing the heads of Insurances to be made by the Corporations of the Royal Exchange Assurance and London Assurance, or by the Corporations of the Royal Exchange Assurance of houses and goods from fire and London Assurance of houses and goods from fire.

Memorandum or agreement for granting a lease or tack, at rack rent, of any messuage, land, or tenement under the yearly rent of five pounds (*b*).

Memorandum or agreement for the hire of any labourer, artificer, manufacturer, or menial servant.

Memorandum, letter, or agreement made for or relating to the sale of any goods, wares, or merchandise.

Memorandum or agreement made between the master and mariners of any ship or vessel, for wages, on any voyage coastwise from port to port in Great Britain.

Agreement made in compliance with, or under the provisions of the Merchant Seamen's Act, 7 *&* 8 *Vict. c.* 112; *or the Mercantile Marine Act,* 13 *&* 14 *Vict. c.* 93.

Letters containing any agreement (*not before exempted*) *in respect of any merchandise, or evidence of such an agreement, which shall pass by the post, between merchants or other persons carrying on trade or commerce in Great Britain or Ireland, and residing and actually being, at the time of sending such letters, at the distance of fifty miles from each other.*

Further Exemptions.

Memorandums or agreements made necessary by the 9 *Geo. IV. c.* 14, [Lord Tenterden's Act; *for rendering a written memorandum necessary to the validity of certain promises and engagements, &c.*]

Agreements in Ireland, to submit any matter in dispute, the amount or value whereof shall be under 20*l. to arbitration.* 5 *&* 6 *Will. IV. c.* 64, *s.* 1; 5 *&* 6 *Vict. c.* 82, *s.* 5.

See also the General Exemptions at the end of this part of the Table.

ANNUITY, conveyance in consideration of.—See CONVEYANCE.

ANNUITY, grant of, by the Crown.—See GRANT.

ANNUITY, purchase of.—See CONVEYANCE—BOND.

ANNUITY, re-purchase of.—Any release, or other conveyance of any annuity, or rent-charge, made in the original grant thereof subject to be redeemed or re-purchased, to be exempted, on the re-purchase thereof, from the *ad valorem* duty on conveyances on sale, and charged only with the ordinary duty on deeds or instruments of the like kind, not upon sale, (viz., 1*l.* 15*s.* with progressive duties of 10*s.* each).

55 Geo. III. c. 184, s. 31, Great Britain;
5 & 6 Vict. c. 82, s. 2, Ireland.

(*a*) It is not to be understood that this duty of 1*l.* 15*s.* is imposed in all cases of agreement to be established by means of letters. An agreement may consist of several writings, whether on the same piece of paper or on different papers, chargeable with one stamp duty, only, of the lower amount; (*Peate* v. *Dicken*, 1 C. M. & R. 422; *Stead* v. *Liddard*, 9 Moore, 2; and see *ante*, p. 45); and, of course, no exception to this is to be made in the case of letters. The clause in the text is not a charge, but a relief, by way of proviso, fixing a maximum amount of duty.

(*b*) This does not apply where the interest is a beneficial one, as in the case of a building lease, *Doe* v. *Bouldcot*, 2 Esp. 595.

	Duty. £	s.	d.
APPOINTMENT, in execution of a power, of land or other property, real or personal, or of any use or interest therein, where made by any writing, not being a deed or will . . .	1	15	0
And see PROGRESSIVE DUTY.			
If made by Deed.—See DEED.			
APPOINTMENT of a chaplain, operating as a qualification to hold two ecclesiastical benefices in England or Ireland.	2	0	
APPOINTMENT of a gamekeeper.—See DEPUTATION.			
APPOINTMENT to offices.—See ADMISSION—GRANT.			
APPRAISEMENT or valuation of any estate or effects, real or personal, heritable or moveable; or of any interest therein; or of the annual value thereof; or of any dilapidations; or of any repairs wanted; or of the materials and labour used or to be used in any buildings; or of any artificer's work whatsoever;			
Where the amount of such appraisement or valuation shall not exceed 50*l.*	0	2	6
And where it shall exceed 50*l.* and not exceed 100*l.* . .	0	5	0
——— 100*l.* ——— 200*l.* . .	0	10	0
——— 200*l.* ——— 500*l.* . .	0	15	0
——— 500*l.* . . .	1	0	0
Exemptions.			
Appraisements or valuations made in pursuance of the order of any Court of Admiralty or Vice-Admiralty, or of any Court of Appeal from any sentence, adjudication, or judgment of any Court of Admiralty or Vice-Admiralty.			
Appraisements or valuations of any property made for the purpose of ascertaining the legacy duty payable in respect thereof.			
APPRAISER, licence to act as such.—See LICENCE.			
APPRENTICESHIP and CLERKSHIP.—Indenture or other instrument or writing containing the covenants, articles, or agreements, for or relating to the service of any apprentice, clerk, or servant who shall be put or placed to or with any master or mistress to learn any profession, trade, or employment whatsoever, *except articles of clerkship to attorneys and others hereinafter specifically charged.*			
If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned, or conveyed, or be secured to be paid, given, assigned, or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk, or servant, or both the money and value of such other matter or thing shall not amount to 30*l.*	1	0	0
If the same shall amount to 30*l.* and not amount to 50*l.* .	2	0	0
——— 50*l.* ——— 100*l.* .	3	0	0
——— 100*l.* ——— 200*l.* .	6	0	0
——— 200*l.* ——— 300*l.* .	12	0	0
——— 300*l.* ——— 400*l.* .	20	0	0
——— 400*l.* ——— 500*l.* .	25	0	0
——— 500*l.* ——— 600*l.* .	30	0	0
——— 600*l.* ——— 800*l.* .	40	0	0
——— 800*l.* ——— 1000*l.* .	50	0	0

	Duty. £	s.	d.
APPRENTICESHIP and CLERKSHIP—*continued.*			
And if the same shall amount to 1000*l.* or upwards . .	60	0	0
And where there shall be no such consideration as aforesaid moving to the master or mistress . . .	0	2	6

APPRENTICESHIP and CLERKSHIP.—Indenture or other instrument or writing containing the covenants, articles, or agreements for or relating to the service of any such apprentice, clerk, or servant as aforesaid, who shall be put or placed to or with a new master or mistress, either by assignment, transfer, or turnover, or upon the death, absence, or incapacity of the former master or mistress, or otherwise; or any writing whatever, whereby any such assignment, transfer, or turnover may be effectuated or ascertained.

Where there shall be any such valuable consideration as aforesaid moving to the new master or mistress, exclusive of any part of the consideration to the former master or mistress, which may be returned or given or transferred to the new master or mistress. — *Such and the like duty in proportion to the amount or value of such new consideration only as is before charged on any original indenture of apprenticeship.*

And where there shall be no such consideration . . — 0 2 6

And where there shall be *duplicates* or *two parts* of any such indenture or other instrument or writing relating to any such apprentice, clerk, or servant as aforesaid—See DUPLICATE or COUNTERPART.

NOTE.—And *the part* bearing the *ad valorem* or higher duty shall belong to and be kept by the apprentice, clerk, or servant, or some person on his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out, by assignment or otherwise, *the part* bearing the *ad valorem* duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk, or servant, or some person on his or her behalf; and in each of the said cases *the other part* bearing the lower duty hereby charged thereon shall belong to and be kept by the original master or mistress, or the new master or mistress, as the case may be; and the same shall be respectively received in evidence accordingly.

The apprenticeship duties of 2*s.* 6*d.* are granted by the 16 & 17 Vict. c. 59, the others by the 55 Geo. III. c. 184.

Exemptions from the preceding and all other Stamp Duties.

Indentures or other instruments for placing out poor children apprentices by or at the sole charge of any parish or township, or by or at the sole charge of any Public Charity, or pursuant to the 32 *Geo. III. for the further regulation of parish apprentices.*

And all assignments of such poor apprentices, provided there shall be no such valuable consideration as aforesaid given to the new master or mistress other than what may have been or shall be given by any parish or township, or by any Public Charity.

Indentures of apprenticeship made in compliance with or under the provisions of the Merchant Seamen's Act, 7 *&* 8 *Vict. c.* 112; *or the Mercantile Marine Act,* 13 *&* 14 *Vict. c.* 93.

	Duty. £ s. d.
APPRENTICESHIP and CLERKSHIP—*continued.*	
Indentures and other instruments of apprenticeship in Ireland where there is no such consideration as aforesaid exceeding in amount or value 10*l. moving to the master or mistress; and assignments thereof, where there is no such consideration exceeding that amount moving to the new master or mistress.* 5 & 6 *Vict. c.* 82, *s.* 3.	
ARMS, or surname—licence to use.—See GRANT.	
ARMY, appointment of officer in.—See COMMISSION.	
ARTICLES of CLERKSHIP or contract whereby any person shall first become bound to serve as a clerk, in order to his admission as an attorney or solicitor;	
In any of Her Majesty's Courts at Westminster or in Ireland . 16 & 17 Vict. c. 63.	80 0 0
In any of the Courts of the Great Sessions in Wales, or of the Counties Palatine of Chester, Lancaster, and Durham, or in any other Court of Record in England holding pleas, where the debt or damage amounts to forty shillings . .	60 0 0
NOTE.—Articles stamped with 60*l.* in order to admission in any of the inferior Courts above specified, may be stamped for admission in the superior Courts on payment of the additional duty. 1 Will. IV. c. 70, s. 17; 16 & 17 Vict. c. 59, s. 7.	
ARTICLES of CLERKSHIP or contract whereby any person (*not being an attorney of one of the Courts at Westminster or in Ireland respectively*) shall first become bound to serve as a clerk, in order to his admission as a sworn clerk in the Office of the Six Clerks of the Court of Chancery, or as a sworn clerk, clerk in court, or side clerk in the Office of Pleas, or the Office of Her Majesty's Remembrancer in the Court of Exchequer, in England or Ireland .	120 0 0
ARTICLES of CLERKSHIP or contract whereby any person shall become bound to serve as a clerk, in order to any such admission as aforesaid, for the residue of the term for which he was originally bound, in consequence of the death of his former master, or of the contract between them being vacated by consent, or by rule of Court, or in any other event	1 15 0
And where any person having entered into any articles of clerkship or contract duly stamped according to the law in force at the date thereof, in order to his admission as a sworn clerk, clerk in court, or side clerk in the Court of Chancery or Court of Exchequer, or in order to his admission as an attorney or solicitor in any of the Courts at Westminster, or in Ireland respectively, shall afterwards enter into any such articles or contract as aforesaid for any other of those purposes, the said last-mentioned articles or contract shall be charged only with a duty of .	1 15 0
And where the same articles of clerkship shall be a qualification to any person to be admitted, not only as an attorney or solicitor in any of the Courts at Westminster, or in Ireland respectively, but also as a sworn clerk, clerk in court, or side clerk in the Court of Chancery or Court of Exchequer in England or Ireland respectively, or as an attorney or solicitor in any of the inferior Courts aforesaid, such articles shall not be charged with more than one duty of 120*l.* [*Quære.—For* 120*l. read* 80*l. in reference to inferior courts.*]	

	Duty. £ s. d.
ARTICLES of CLERKSHIP or contract whereby any person shall first become bound to serve as a clerk, in order to his admission as a proctor in the High Court of Admiralty in England, or the Court of Admiralty in Ireland, or in any of the Ecclesiastical Courts in Doctors' Commons, or in Ireland . . . . . 16 & 17 Vict. c. 63.	80 0 0
ARTICLES of CLERKSHIP or contract whereby any person shall become bound to serve as a clerk, in order to his admission as a proctor in any of the Courts aforesaid, for the residue of the term for which he was originally bound, in consequence of the death of his former master, or of the contract between them being vacated, or in any other event	1 15 0
ARTICLES, or indenture of clerkship or apprenticeship, whereby any person shall first become bound to serve as a clerk or apprentice, in order to his admission as a writer to the signet, or as a solicitor, agent, or attorney, in any of the Courts of Session, Justiciary, Exchequer, and Commission of Teinds in Scotland . .	60 0 0
ARTICLES, or indenture of clerkship or apprenticeship, whereby any person shall first become bound to serve as a clerk or apprentice, in order to his admission to act as a procurator or solicitor in the High Court of Admiralty, Commissary Court at Edinburgh, or any other inferior Court in Scotland	30 0 0
ARTICLES, or indenture of clerkship or apprenticeship, whereby any person shall become bound to serve as a clerk or apprentice, in order to any such admission in Scotland as aforesaid, for the residue of the term for which he was originally bound, in consequence of the death of his former master, or of the contract between them being vacated, or in any other event . .	1 15 0
ARTICLES of CLERKSHIP, or contract or indenture of apprenticeship, whereby any person, having been before bound to serve as a clerk or apprentice, in order to any such admission as aforesaid in England, Scotland, or Ireland, and not having completed or perfected his service so as to entitle him to such admission, shall become bound afresh, for a new term of years, for the same purpose	*The same duty as would be payable on any original articles, contract, or indenture, for such purpose.*
But in this case, the stamp used on the articles, contract, or indenture, first entered into for the said purpose, shall be allowed as a spoiled stamp, on being delivered up to the Commissioners of Inland Revenue, to be cancelled, within six calendar months after the execution of the new articles, contract, or indenture.	
And in all the before-mentioned cases of Articles of Clerkship, see DUPLICATE or COUNTERPART.	
ASSIGNATION or Assignment, upon the sale of any property.—See CONVEYANCE.	
ASSIGNATION in Security.—See MORTGAGE.	
ASSIGNATION of any wadset, heritable bond, &c.—See MORTGAGE.	
ASSIGNMENT of any JUDGMENT in Ireland . . 16 & 17 Vict. c. 63, s. 6.	1 15 0
ASSIGNMENT of any mortgage, or other similar security, or of any bond for securing the payment of money.—See MORTGAGE—BOND.	

	Duty. £	s.	d.
ASSIGNATION or ASSIGNMENT of any property, real or personal, heritable or moveable, *not otherwise charged nor expressly exempted from all Stamp Duty*	1	15	0
And see PROGRESSIVE DUTY.			
ASSURANCE or Insurance.—See POLICY.			
ATTESTED COPY.—See COPY.			
ATTORNEY.—See ADMISSION—CERTIFICATE.			
ATTORNEY, Letter or Power of.—See LETTER of Attorney.			
ATTORNEY, Warrant of.—See WARRANT of Attorney.			
AWARD in England or Ireland, and award or decreet arbitral in Scotland	1	15	0
And see PROGRESSIVE DUTY.			
Exemptions in Ireland.			
Award where the matter in dispute is under the value of 20l.; and all deeds, bonds, agreements, or other instruments, for submitting any such matter to arbitration. 5 & 6 *Will. IV. c.* 64, *s.* 1; 5 & 6 *Vict. c.* 82, *s.* 5.			
BACHELOR of Arts.—See ADMISSION—TESTIMONIAL.			
BACK BOND.—See MORTGAGE.			
BANKERS.—See CERTIFICATE—COMPOSITION—LICENCE.			
BANKRUPTCY.—For the stamp duties payable in lieu of fees, see after PART II. of the TABLE.			
BARGAIN and SALE (to be enrolled) of any estate of freehold in lands or other hereditaments in England or Ireland, upon the sale thereof, or by way of mortgage.—See CONVEYANCE—MORTGAGE.			
BARGAIN and SALE (to be enrolled) of any estate of freehold in lands or other hereditaments in England or Ireland, upon any other occasion than the mortgage or sale thereof . . .	5	0	0
And see PROGRESSIVE DUTY (*a*).			
Exemptions from the preceding Duty.			
Bargains and sales made by Commissioners to the assignees of bankrupts, which are to pay a duty only as deeds in general.			
(But see the general exemptions at the end of this part of the Table.)			
BARRISTER.—See ADMISSION.			
BILL of EXCHANGE, DRAFT or ORDER, viz.			
Draft or Order for the payment of any sum of money *to the bearer*, or *to order on demand*	0	0	1
16 & 17 Vict. c. 59.			

(*a*) The following duties were repealed, from and after the 10th October, 1850, by the 13 & 14 Vict. c. 97; viz.—

	£	s.	d.
BARGAIN and SALE (or Lease) for a year, for vesting the possession of lands or other hereditaments in England or Ireland, and enabling the bargainee to take a release of the freehold or inheritance, upon the sale or mortgage thereof;			
Where the purchase or consideration money expressed in the release shall not amount to 20*l.*	0	10	0
And where the same shall amount to 20*l.* and not amount to 50*l.* . . .	0	15	
And where the same shall amount to 50*l.* and not amount to 150*l.* . . .	1	0	0
And where the same shall amount to 150*l.* or upwards	1	15	0
BARGAIN and SALE (or Lease) for a year, upon any other occasion . . .	1	15	0

Exemption in Ireland from the duties in this Note.

Lease of Lands, &c. in Ireland, for any term not exceeding three lives, where the annual amount of the rent (not penal) reserved shall not exceed 50l, and the fine or consideration shall not exceed 200l.

		Duty. £	s.	d.
Inland BILL of EXCHANGE, Draft, or Order for the Payment to the Bearer, or to Order, at any Time otherwise than on Demand, of any Sum of Money,				
Not exceeding	5*l.*	0	0	1
Exceeding 5*l.* and not exceeding	10*l.*	0	0	2
——— 10*l.* ———	25*l.*	0	0	3
——— 25*l.* ———	50*l.*	0	0	6
——— 50*l.* ———	75*l.*	0	0	9
——— 75*l.* ———	100*l.*	0	1	0
——— 100*l.* ———	200*l.*	0	2	0
——— 200*l.* ———	300*l.*	0	3	0
——— 300*l.* ———	400*l.*	0	4	0
——— 400*l.* ———	500*l.*	0	5	0
——— 500*l.* ———	750*l.*	0	7	6
——— 750*l.* ———	1000*l.*	0	10	0
——— 1000*l.* ———	1500*l.*	0	15	0
——— 1500*l.* ———	2000*l.*	1	0	0
——— 2000*l.* ———	3000*l.*	1	10	0
——— 3000*l.* ———	4000*l.*	2	0	0
——— 4000*l.* and upwards		2	5	0

17 & 18 Vict. c. 83.

Inland BILL, Draft, or Order for the payment of any sum of money, though not made payable to the bearer or to order, if the same shall be delivered to the payee or some person on his or her behalf . . . . . — *The same duty as on a bill of exchange for the like sum payable to bearer or order.*

Inland BILL, Draft, or Order for the payment of any sum of money, weekly, monthly, or at any other stated periods, if made payable to the bearer or to order, or if delivered to the payee or some person on his or her behalf, whether the total amount of the money thereby made payable shall be specified therein or can be ascertained therefrom or shall be indefinite. — *The same duty as on a bill payable to bearer or order on demand.*

This is the result of the enactments in the 55 Geo. III. c. 184, 16 & 17 Vict. c. 59, and 17 & 18 Vict. c. 83.

And the following instruments are to be deemed and taken to be inland bills, drafts, or orders for the payment of money within the intent and meaning of this TABLE:—

All drafts or orders for the payment of any sum of money by a bill or promissory note, or for the delivery of any such bill or note in payment or satisfaction of any sum of money, where such drafts or orders shall require the payment or delivery to be made to the bearer or to order, or shall be delivered to the behalf.

All receipts given by any banker or bankers or other person or persons for money received, which shall entitle or be intended to entitle the person or persons paying the money, or the bearer of such receipts, to receive the like sum from any third person or persons.

All bills, drafts, or orders for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, if the same shall be made payable to the bearer or to order, or if the same shall be delivered to the payee or some person on his or her behalf.

And all documents or writings usually termed letters of credit, or whereby any person to whom any such document or writing is or is intended to be delivered or sent, shall be entitled or be intended to be entitled to have credit with, or in

	Duty. £	s	d
Inland BILL—*continued*			
account with, or to draw upon any other person for or to receive from such other person any sum of money therein mentioned 16 & 17 Vict c 59			
Foreign BILL OF EXCHANGE drawn in, but payable out of the United Kingdom,			
If drawn singly or otherwise than in a set of three or more	*The same duty as on an inland bill of the same amount and tenor*		
If drawn in sets of three or more, for every bill of each set,			
Where the sum payable thereby shall not exceed 25*l*	0	0	1
And where it shall exceed 25*l* and not exceed 50*l*	0	0	2
—— 50*l* —— 75*l*	0	0	3
—— 75*l* —— 100*l*	0	0	4
—— 100*l* —— 200*l*	0	0	8
—— 200*l* —— 300*l*	0	1	0
—— 300*l* —— 400*l.*	0	1	4
—— 400*l* —— 500*l*	0	1	8
—— 500*l* —— 750*l*	0	2	6
—— 750*l* —— 1000*l*	0	3	4
—— 1000*l* —— 1500*l*	0	5	0
—— 1500*l* —— 2000*l*	0	6	8
—— 2000*l* —— 3000*l.*	0	10	0
—— 3000*l* —— 4000*l*	0	13	4
—— 4000*l* and upwards	0	15	0
Foreign BILL OF EXCHANGE drawn out of the United Kingdom, and payable within the United Kingdom	*The same duty as on an inland bill of the same amount and tenor*		
Foreign BILL OF EXCHANGE drawn out of the United Kingdom, and payable out of the United Kingdom, but indorsed or negotiated within the United Kingdom	*The same duty as on a foreign bill drawn within the United Kingdom and payable out of the United Kingdom*		
Exemption from the duties on drafts or orders			
All letters of credit, whether in sets or not, sent by persons in the United Kingdom to persons abroad authorizing drafts on the United Kingdom 16 & 17 *Vict c* 59	*Foreign Letters of Credit*		
Exemptions from the preceding and all other Stamp Duties			
All bills of exchange, or bank post bills, issued by the Governor and Company of the Bank of England	*Bank Bills*		
All bills, orders, remittance bills, and remittance certificates drawn by commissioned officers, masters and surgeons in the Navy or by any Commissioner or Commissioners of the Navy, under the authority of the 35th Geo III, for the more expeditious payment of the wages and pay of certain officers belonging to the Navy	*Navy pay Bills*		
All bills drawn pursuant to any former Act or Acts of Parliament by the Commissioners of the Navy, or by the Commissioners for victualling the Navy, or by the Commissioners for managing the transport service and for taking care of sick and wounded seamen, upon and payable by the Treasurer of the Navy			
All drafts or orders for the payment of any sum of money to the bearer on demand, and drawn upon any banker or bankers, or any person or persons acting as a banker who shall reside or transact the business of a banker within fifteen (a) miles of the place where such drafts or orders shall be issued, provided such place shall be specified in such drafts or orders, and provided the same shall bear date on or before the day on which the same	*Cheques on Bankers*		

(a) 9 Geo IV c 49 s 15

	Duty. £	s.	d.
BILLS of EXCHANGE—*continued.*			
shall be issued, and provided the same do not direct the payment to be made by bills or promissory notes.			
All bills for the pay and allowances of her Majesty's land forces, or for other expenditures liable to be charged in the public regimental or district accounts, which shall be drawn according to the forms prescribed or to be prescribed by Her Majesty's orders, by the paymasters of regiments or corps, or by the chief paymaster, or deputy paymaster, and accountant of the army depôt, or by the paymasters of recruiting districts, or by the paymasters of detachments, or by the officer or officers authorized to perform the duties of the paymastership during a vacancy, or the absence, suspension, or incapacity of any such paymaster as aforesaid; save and except such bills as shall be drawn in favour of contractors or others who furnish bread or forage to Her Majesty's troops, and who by their contracts or agreements shall be liable to pay the stamp duties on the bills given in payment for the articles supplied by them.	*Army pay bills.*		
BILL of LADING of or for any goods, merchandise, or effects to be exported or carried coastwise	0	0	6
This duty is a reduction from 3*s.* in Great Britain, by the 5 & 6 Vict. c. 79, and 1*s.* 6*d.* in Ireland by the 5 & 6 Vict. c. 82, by sections 24 and 34 of which Acts, respectively, a penalty of 50*l.* is imposed for making or signing any bill of lading upon unstamped paper; and the stamping of any such bill of lading is prohibited.			
BILL of SALE absolute.—See CONVEYANCE.			
BILL of SALE as a Security.—See MORTGAGE.			
BOND in England or Ireland, and personal bond in Scotland, given as a security for the payment of any *definite* and *certain* sum of money (*a*),			
Not exceeding 50*l.*	0	1	3
Exceeding 50*l.* and not exceeding 100*l.* . .	0	2	6
——— 100*l.* ——— 150*l.* . .	0	3	9
——— 150*l.* ——— 200*l.* . .	0	5	0
——— 200*l.* ——— 250*l.* . .	0	6	3
——— 250*l.* ——— 300*l.* . .	0	7	6
And where the same shall exceed 300*l.*, then for every 100*l.*, and also for any fractional part of 100*l.* . . .	0	2	6
BOND in England or Ireland, and personal bond in Scotland, given as a security for the repayment of any sum or sums of money *to be thereafter lent, advanced, or paid, or which may become due upon an account current,* together with any sum already advanced or due, or without, as the case may be;			
Where the money secured or to be ultimately recoverable thereupon *shall be limited* not to exceed a given sum .	*The same duty as on a bond for such limited sum.*		
And where the total amount of the money secured or to be ultimately recoverable thereupon *shall be uncertain and without any limit*	*The same duty as on a bond for a sum equal to the amount of the penalty of such bond.*		

(*a*) For the duties payable on bonds prior to the 11th October, 1850, see MORTGAGE, *post*, note

	Duty. £ s. d.
BOND—*continued.*	
And where there shall be no penalty of the bond in such last-mentioned case, such bond shall be available for such an amount only as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.	
BOND in England or Ireland, and personal bond in Scotland, given as a security for the transfer or re-transfer of any share in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of *any other* company or corporation	*The same* ad valorem *duty as on a bond for a sum of money equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the bond, or on either of the ten days preceding, or if there shall not have been any known sale on any of such days, then on the latest day preceding on which there shall have been a known sale.*
Heritable BOND in Scotland for any of the purposes aforesaid.—See MORTGAGE.	
BOND in England or Ireland, and personal bond in Scotland, given as a security for the payment of any sum of money, or for the transfer or re-transfer of any share in any of the stocks or funds before mentioned, *which shall be secured also by a mortgage or wadset*, or other instrument or writing hereinafter charged with and which shall have paid the same duty as a mortgage or wadset, or for the performance of covenants contained in such mortgage or other instrument or writing, or for both those purposes, provided such mortgage, wadset, or other instrument or writing *shall bear even date with and be referred to in such bond;*	
Where the sum of money or the value of the stock or funds secured shall not exceed 800*l.* . . .	*The same* ad valorem *duty as on a mortgage or wadset for securing the like amount or value.*
And where such sum of money or value shall exceed 800*l.* . .	1 0 0
BOND in England or Ireland, and personal or heritable bond in Scotland, given as an *additional or further security* for the payment of any sum or sums of money, or for the transfer or re-transfer of any share in any of the stocks or funds before mentioned, previously secured by a bond, mortgage, or other security therein referred to, and which shall have paid the proper *ad valorem* duty on bonds or mortgages imposed by law at the date thereof;	
Where the sum of money or the value of the stock or funds secured shall not exceed 1400*l.* . . .	*The same* ad valorem *duty as on a bond or mortgage for securing the like sum or value.*
And where such sum of money or the value of the stock or funds secured shall exceed 1400*l.* . . .	1 15 0
BOND.—Any TRANSFER OF ASSIGNMENT, Disposition or Assignation of any such bond as aforesaid, and which shall have paid the proper *ad valorem* duty on bonds;	

	Duty. £ s. d.	
BOND—*continued.*		
Where the principal money or stock secured by the bond shall not exceed in amount or value in the whole the sum of 1400*l.*		*The same duty as on a bond for the total amount or value of such principal money or stock.*
And in every other case such transfer, assignment, disposition, or assignation shall be chargeable with the duty of . And see PROGRESSIVE DUTY.	1 15 0	
BOND in England or Ireland, and personal or heritable bond in Scotland, given as the *only or principal* security for the payment of any *annuity upon the original creation and sale* thereof .		*The same ad valorem duty as on a conveyance upon sale in consideration of the sum or value given or agreed to be given for the purchase of such annuity.*
For the duty payable, see CONVEYANCE upon the sale of Property.		
BOND in England or Ireland, and personal bond in Scotland, given as a *collateral or auxiliary* security for the payment of any *annuity upon the original creation and sale thereof*, where the same shall be granted or conveyed or secured by any other deed or instrument liable to and charged with the *ad valorem* duty imposed by law on conveyances upon the sale of any property;		
Where such *ad valorem* duty shall not exceed 20*s.* such bond shall be chargeable with a stamp duty of equal amount with the said *ad valorem* duty.		
And where such *ad valorem* duty shall exceed 20*s.* such bond shall be chargeable with the duty of . . .	1 0 0	
BOND in England or Ireland, and personal or heritable bond in Scotland, given as a security for the payment of any *annuity*, (*except upon the original creation and sale thereof*,) or of any sum or sums of money at stated periods (*not being interest for any principal sum, nor rent reserved or payable upon any lease or tack*), for any definite and certain term, so that the total amount of the money to be paid can be previously ascertained .		*The same ad valorem duty as on a bond of the like nature for the payment of a sum of money equal to such total amount.*
BOND in England or Ireland, and personal or heritable bond in Scotland, given as a security for the payment of any *annuity*, (*except as aforesaid*,) or of any sum or sums of money at stated periods (*not being interest for any principal sum, nor rent reserved or payable upon any lease or tack*), for the term of life or any other *indefinite period*, so that the whole money to be paid cannot be previously ascertained;		
Where the annuity or sum secured shall not exceed 50*l. per annum*	1 0 0	
And where the same shall exceed 50*l.* and not exceed 100*l. per annum*	2 0 0	
And where the same shall exceed 100*l. per annum*, then for every 100*l. per annum* and also for any fractional part of 100*l. per annum*	2 0 0	
But where there shall be both a personal and heritable bond in Scotland in separate deeds of the same date for securing any such annuity or sums payable at stated periods, and the *ad valorem* duty above charged thereon shall amount to 2*l.* or upwards, the heritable bond only shall be charged with the *ad*		

	Duty. £ s. d.
BOND—*continued.*	
valorem duty, and the personal bond shall be charged only with a duty of	1 0 0
All the before-mentioned duties on bonds are imposed by the 13 *&* 14 *Vict. c.* 97.	
BOND commonly called counterbond in England or Ireland, and personal bond of relief in Scotland, for indemnifying any person who shall have become bound or engaged as surety or cautioner for the payment of any sum of money or annuity, or for the transfer of any share in any of the stocks or funds before mentioned .	1 15 0
PROVISO, That no such bond is to be chargeable with any greater amount of stamp duty than the *ad valorem* duty before mentioned, charged upon a bond given for the payment of a definite and certain sum of money of the same amount as the penalty of such bond (13 & 14 Vict. c. 97) (*a*). Thus this duty of 1*l.* 15*s.* is to be charged only as a maximum; the *ad valorem* duty on the penalty attaching where such latter duty is less than that amount. This observation applies also to the bonds hereinafter mentioned in reference to the duty specified in each case.	
BOND in England or Ireland, and personal bond in Scotland, for the due execution of an office, and to account for money received by virtue thereof	1 15 0
See said PROVISO.	
BOND given pursuant to the directions of any Act of Parliament, or by the direction of the Commissioners of Customs or Excise, or any of their officers, for or in respect of any of the duties of customs or excise, or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto (6 Geo. IV. c. 41 (*b*)); and also, bond given to prevent the re-landing of plate, in respect of which a drawback is allowed upon the exportation thereof (8 & 9 Vict. c. 86, s. 76); and bond required by the Act for the registering of British vessels (8 & 9 Vict. c. 89, s. 25) . . .	0 5 0
See said PROVISO.	
By the 6 Geo. IV. c. 41, a penalty of 50*l.* is imposed for including in one and the same bond any goods or things *bonâ fide* belonging to more persons than one, not being copartners, or joint-tenants or tenants in common (sect. 4).	
See exemption as to bonds on obtaining drawback.	

(*a*) In the schedule to the 13 & 14 Vict. c. 97, immediately after the foregoing bonds, is the following item, with the proviso, viz.:—

Bond of any kind or description *given for any other purpose than as aforesaid* . . . . — *The duty chargeable thereon by any act or acts now in force.*

Provided always, and it is hereby declared, that no such bond as last-mentioned shall be charged or chargeable under this or any other Act or Acts with any greater amount of stamp duty than the *ad valorem* duty hereinbefore charged upon a bond given for the payment of a *definite and certain* sum of money *of the same amount as the penalty* of such bond.

This proviso has reference to the bonds subsequently mentioned above, which are charged with duty (except where it is otherwise specified) by the 55 Geo. III. c. 184. The preceding duties on bonds are granted by the 13 & 14 Vict. c. 97.

(*b*) The duty of 5*s.* granted by this Act extended to bonds for securing the payment of Customs or Excise duties; these bonds are now chargeable with *ad valorem* duty as ordinary money-bonds, this duty of 5*s.* being retained by the 13 & 14 Vict. c. 97, by means of the item in the above note (*a*), only in respect of bonds given *for any other purpose than* the payment of money

BOND—*continued.*	Duty. £	s.	d.
BOND entered into by any person on obtaining a marriage licence .	1	0	0
No such bond is now required either in England or (7 & 8 Vict. c. 81) Ireland.			
BOND on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland (*see Exemptions*) .	1	0	0
See said PROVISO.			
BOND, accompanied with a deposit of title-deeds, for making a mortgage, wadset, or other security, on any estate or property therein comprised.—See MORTGAGE.			
Back BOND, declaration, or other deed or writing for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.—See MORTGAGE.			
Bail BOND, or recognizance taken in the High Court of Admiralty, in the Cinque Ports exercising admiralty jurisdiction, the High Court of Appeal in prize causes, or the High Court of Delegates in admiralty matters, in England; or in the Court of Admiralty in Ireland; (*not being in any suit*, 5 Geo. IV. c. 41) . . .	1	0	0
55 Geo. III. c. 184, schedule, part 2, England; 5 & 6 Vict. c. 82, Ireland.			
See said PROVISO.			
BOND in England or Ireland, and personal bond in Scotland, of any kind whatever, *not otherwise charged, nor expressly exempted from all stamp duty*	1	15	0
See said PROVISO.			
Heritable BOND in Scotland, of any kind whatever, *not otherwise charged, nor expressly exempted from all stamp duty* . .	1	15	0
And in all the said several cases of BOND, see PROGRESSIVE DUTY.			

GENERAL DIRECTIONS respecting BONDS.

Where any such bond as aforesaid shall be given as a security for the payment of a sum of money, and also of a share in any of the stocks or funds before mentioned, or an annuity, or both, or for the payment of an annuity, and also of a share in any of the said stocks or funds, the proper *ad valorem* duty shall be charged in respect of each.

And where any such bond as aforesaid shall be given as a security for the payment or transfer, to different persons, of separate and distinct sums of money or annuities, or shares in any of the stocks or funds before mentioned, the proper *ad valorem* duty shall be charged in respect of each separate and distinct sum of money, or annuity or share in any of the said stocks or funds, therein specified and secured, and not upon the aggregate amount thereof.

And where any bond in England or Ireland shall be given as a security for the performance of any covenant or agreement for the payment or transfer of any sum of money or annuity, or any share in any of the stocks or funds before mentioned, such bond shall be charged with the same duty as if the same had been immediately given for the payment or transfer of such money, or annuity, or share of the said stocks or funds.

And where, in England or Ireland, any bond for the payment or transfer, or for the performance of any covenant for the payment or transfer of any sum of money or annuity, or any share in any of the stocks or funds before mentioned, shall be con-

Duty.
£ s. d.

BOND—*continued.*

tained in one and the same deed or writing with any other matter or thing in this TABLE specifically charged with any duty (*except any declaration of trust of the money, annuity, stock, or fund secured*), such deed or writing shall be charged with the same duties as such bond and other matter or thing would have been charged with if contained in separate deeds.

But where, in England or Ireland, a bond for the performance of covenants or agreements (*other than for the payment or transfer of any sum of money or annuity, or any share in any of the said stocks or funds*) shall be contained in the same deed or writing with any other matter or thing, the same shall not be charged separately, but the whole shall be considered as one deed, and be charged accordingly under its proper denomination.

Exemptions from the preceding and all other Stamp Duties.

Bonds of the Royal Exchange *and* London Assurance *Corporations exempted from stamp duty by the Act of the* 6 *Geo. I., under which they were incorporated.*

Bonds and other securities exempted from stamp duty by the Act of the 26 *Geo. III., or any other Act now in force for the encouragement of the* British fisheries.

Bonds exempted from stamp duty by the Act of the 28 *Geo. III., or any other Act in force relating to the* exportation of wool, *or any manufacture thereof, or* fuller's earth, fulling clay, *or* tobacco-pipe clay; *or by the Act of the* 29 *Geo. III., or any other Act in force relating to the exportation of* tobacco *from Her Majesty's warehouses.*

Coast bonds, *or bonds relative to the carrying of goods or merchandise coastwise, whether the same shall be given pursuant to the Act of the* 32 *Geo. III., or any other Act in force for the relief of the coast trade of Great Britain, or pursuant to the directions of any proclamation or order in council by Her Majesty, her heirs or successors.*

Bonds and other securities exempted from stamp duty by the Act of the 33 *Geo. III., or any other Act in force for the encouragement of Friendly Societies.* (See general exemptions at the end of this part of the Table.)

Bonds given by cardmakers *for securing the stamp duties on playing cards.*

Bonds given by the proprietors, printers, or publishers of newspapers *for securing the payment of the duties upon the advertisements therein contained.*

Bonds given by stationers *and others* who sell stamped paper *for the printing of* newspapers, *for the due performance of the matters required of them by the Act passed in the* 38 *Geo. III. for regulating the printing and publication of newspapers.*

Bonds given by collectors of assessed taxes *and their sureties for the due payment of moneys collected by them, or otherwise relating to their offices.*

Bonds and other securities given by collectors of land tax *to the Commissioners relating to such tax.* 3 *Geo. IV. c.* 88, *No.* 3, *Rule* 5.

Administration *and confirmation* bonds given by the widow, *child, father, mother, brother, or sister of any* common seaman, *marine, or soldier, who shall be slain or die in the service of Her Majesty, her heirs or successors.*

Duty.
£ s. d.

BOND—*continued.*

Administration bond, *in England or Ireland, given by any person* where the estate *to be administered* shall not exceed 20*l.* in *value; and also* (9 *Geo. IV. c.* 92, *s.* 41) *where the whole estate and effects of the deceased, if a depositor in any* Savings Bank, *shall not exceed the value of* 50*l.*

Confirmation bond in Scotland, *where the whole personal* estate *of the deceased shall* not exceed 20*l. in value.*

Bonds given to the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Great Britain or Ireland respectively, by creditors petitioning for commissions of bankrupt. 5 *Geo. IV. c.* 41, *s.* 1.

Bonds, in Great Britain or Ireland, given to the sheriff or other person upon the replevy *of any goods or chattels; and assignments thereof. Ibid.*

Bonds for definite and certain sums of money, made and issued by the East India Company *during the term for which a composition is made in lieu of the duties on such bonds.* 5 *&* 6 *Will. IV. c.* 64, *s.* 4.

Bonds by persons licensed to sell stamps. 3 *&* 4 *Will. IV.* c. 97, *s.* 1.

Bonds given pursuant to any Act of Parliament, or by the direction of the Commissioners of Customs or Excise, or any of their officers, upon or with relation to the receiving or obtaining, or entitling any person to receive or obtain any drawback *of any duty of Customs or Excise, for or in respect of any goods, wares, or merchandise exported, or shipped to be exported from Great Britain or Ireland to any parts beyond the seas; or upon or with relation to the obtaining of any debenture or certificate for entitling any person to receive any such drawback.* 7 *Vict. c.* 21, *s.* 8.

Bonds made and executed in Ireland, *whereby any person shall become bound to submit any matter in dispute to* arbitration, *where such matter shall be under the amount or value of* 20*l.* 5 *&* 6 *Will. IV. c.* 64, *s.* 1; 5 *&* 6 *Vict. c.* 82, *s.* 5.

Bonds and warrants of attorney by high constables or collectors of grand-jury cess in Ireland. 9 *&* 10 *Vict. c.* 60, *and c.* 107, *s.* 10.

Transfers of bonds and mortgages of public companies upon which quadruple *ad valorem* duties have been originally paid. 16 *&* 17 *Vict. c.* 59, *s.* 14.

See also the general exemptions at the end of this part of the TABLE.

BOROUGH or BURGH.—See ADMISSION.

CARDS and DICE.—For and upon every LICENCE to be taken out annually by every maker of playing cards or dice . . . 0 5 0

For and in respect of *every pack of playing cards* which shall be made fit for sale or use in the United Kingdom . . 0 1 0

For and in respect of *every pair of dice* which shall be made fit for sale or use in the United Kingdom 1 0 0

9 Geo. IV. c. 18.

CATALOGUE.—See SCHEDULE.

CERTIFICATE to be taken out *yearly* by every person admitted as an ATTORNEY or SOLICITOR in any of Her Majesty's Courts at Westminster or in Ireland, or in any other Court in England, holding pleas, where the debt or damage amounts to 40*s.*; [and by every person admitted as a PROCTOR in any of the ecclesiastical or admiralty courts in England or Ireland;] and by every person

	Duty. £	s.	d.
CERTIFICATE—*continued.*			
admitted as a WRITER TO THE SIGNET, or as a solicitor, agent, attorney, or procurator in any of the Courts in Scotland;—and by every person admitted or enrolled as a NOTARY PUBLIC in England, Scotland, or Ireland;—[and also by every SWORN CLERK, clerk in court, and other clerk or officer in any of the Courts aforesaid,] who, in his own name, or in the name of any other person, shall commence, prosecute, carry on, or defend any action, suit, prosecution, or other proceeding in any of the Courts aforesaid, or do any notarial act whatever, for or in expectation of any fee, gain, or reward, as an attorney, solicitor, agent, proctor, procurator, or notary public, although not admitted or enrolled as such;			
If he shall reside within ten miles from the General Post Office in the city of London, or within the city or shire of Edinburgh, or in the city of Dublin, or within three miles thereof;			
And if he shall have been admitted for the space of three years or upwards	9	0	0
Or if he shall not have been admitted so long . .	4	10	0
If he shall reside elsewhere;			
And if he shall have been admitted for the space of three years or upwards	6	0	0
Or if he shall not have been admitted so long . .	3	0	0
But no one person is to be obliged to take out more than one certificate, although he may act in more than one of the capacities aforesaid, or in several of the Courts aforesaid.			
NOTE.—Persons residing within the limits here specified in England, Scotland, or Ireland respectively, for the space of forty days, or more, in any one year, or in Ireland ordinarily carrying on their business therein, are to be deemed to be resident within such respective limits, and to be chargeable with the higher duties.			
25 Geo. III. c. 80, s. 6, Great Britain;			
5 & 6 Vict. c. 82, s. 16, Ireland.			
Exemptions.			
All clerks *and* officers *of any of the Courts aforesaid who shall act or be concerned in the conduct or management of any action, suit, prosecution, or other proceeding,* by virtue and in the execution of their respective offices or appointments only, *and shall not be also retained or employed by any party to such action, suit, prosecution, or other proceeding, or by any attorney, solicitor, agent, proctor, or procurator, on behalf of any party thereto, for or in expectation of any fee or reward other than the established fees due and payable in respect of their offices and appointments.*			
CERTIFICATE to be taken out *yearly* by every person, being a member of one of the four Inns of Court in England, and by every person in Ireland, who in the character of CONVEYANCER, special pleader, draftsman in equity, or otherwise, shall, for or in expectation of any fee, gain, or reward, draw or prepare any conveyance of or deed or instrument relating to any estate or property, real or personal, or any other deed or contract whatever, or any pleadings or proceedings in any Court of law or equity.			
If he shall reside within the distance of ten miles from the General Post Office, in the city of London, or in the city of Dublin, or within three miles thereof	9	0	0
And if he shall reside *elsewhere*	6	0	0

	Duty. £	s.	d.
CERTIFICATE—*continued.*			
Exemptions.			
Serjeants at law and barristers:			
Attorneys, solicitors, proctors, and notaries public, and other persons acting as such by virtue of any office or appointment, who shall respectively take out certificates in those characters:			
Public officers drawing or preparing deeds or other instruments by virtue of their offices, and in the course of their official duty only, and not otherwise.			
All the foregoing duties on certificates are granted by the 16 & 17 Vict. c. 63. The exemptions are in the 55 Geo. III. c. 184.			
CERTIFICATE to be taken out yearly by any BANKER or bankers, or other person or persons acting as such in IRELAND, or having registered the firm of his or their house according to law; if he or they shall issue any promissory notes for money payable to bearer on demand, and allowed to be re-issued . . . . 5 & 6 Vict. c. 82.	30	0	0
CERTIFICATE of admission to degrees in the Universities.—See TESTIMONIAL.			
CERTIFICATE of marriage, *except of any common seaman, marine, or soldier*	0	5	0
CERTIFICATE of any person's having received the Holy Sacrament	0	5	0
CERTIFICATE of any goods, wares, or merchandise having been duly entered inwards, which shall be entered outwards for exportation at the port of importation, or be removed from thence to any other port for the more convenient exportation thereof from Great Britain or Ireland, where such certificate shall be issued for enabling any person to obtain a debenture or certificate entitling him to receive any drawback of any duty or duties of customs or any part thereof *See also* DEBENTURE.	0	4	0
CERTIFICATE of the registration of a design, issued under the 6 & 7 Vict. c. 65. . . . . 6 & 7 Vict. c. 72.	5	0	0
CERTIFICATE.—SCRIP CERTIFICATE, that is to say, any document denoting or intended to denote the right or title of the holder thereof, or any person, to any share or shares in any joint stock or other company, or proposed or intended company; or any certificate declaring or entitling the holder thereof, or any person, to be or become the proprietor of any share or shares of or in any such company: where such certificate, or the right or title to such share or shares shall be intended to be transferable by the delivery of such certificate, or otherwise than by deed or instrument in writing . . . . . 16 & 17 Vict. c. 63, s. 8.	0	0	1
CHAPLAIN, appointment of.—See APPOINTMENT.			
CHARTER of resignation, or of confirmation, or of novodamus, or upon apprizing, or upon a decreet of adjudication or sale of any lands or other heritable subjects in Scotland holden of any Subject Superior	0	5	0
And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further *progressive* duty of 13 & 14 Vict. c. 97.	0	5	0
CHARTER-PARTY, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel .	0	5	0

	Duty. £	s.	d.
CHARTER-PARTY—*continued.*			
A charter-party may be stamped within fourteen days after the date, and the execution thereof by the party who first executes the same, on payment of the duty only; after fourteen days and within one calendar month, on payment of a penalty of 10*l.* besides the duty; but after a month it cannot be stamped at all:—			
5 & 6 Vict. c. 79, s. 21, Great Britain.			
5 & 6 Vict. c. 82, s. 34, Ireland; by which Acts the duties are granted.			
CLARE CONSTAT.—See PRECEPT.			
CLERKSHIP, Articles or Contract of.—See APPRENTICESHIP—ARTICLES.			
COLLATION or Appointment by any archbishop, or bishop, to any cathedral prebend, dignity, office, or honorary canonry, having no endowment or emolument attached or belonging thereto .	2	0	0
COLLATION by any archbishop, or bishop, or by any other ordinary or competent authority, to any ecclesiastical benefice, dignity, or promotion in England; or, by any archbishop or bishop, to any ecclesiastical benefice, dignity, or promotion, in Ireland, other than as aforesaid	7	0	0
And where the net yearly value of such benefice, dignity, or promotion shall amount to 300*l.* or upwards, then for every 100*l.* thereof over and above the first 200*l.* a further duty of .	5	0	0
The value to be ascertained by the certificate of the Ecclesiastical Commissioners for England or Ireland, respectively (*a*): Provided always, that two or more benefices episcopally, or (in England) permanently united, are to be deemed one benefice only.			
5 & 6 Vict. c. 79: 6 & 7 Vict. c. 72, England;			
5 & 6 Vict. c. 82, Ireland.			
COLLATION, institution, or admission, by any presbytery or other competent authority, to any ecclesiastical benefice in Scotland .	2	0	0
COMMISSION granted by Her Majesty, Her heirs or successors, or by any person or persons duly authorized by Her or them, to any officer in the army, or in the corps of royal marines . .	1	10	0
Exemptions from the preceding and all other Stamp Duties. Commissions granted to Officers of Yeomanry Cavalry, or Volunteer Infantry, and to Officers of the Local Militia.			
COMMISSION granted by the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral of the United Kingdom, to any officer in the navy . . .	0	5	0
COMMISSION or deputation granted by the Commissioners of Excise	1	10	0
COMMISSION appointing any person Receiver General of the Land and other Taxes for any county or district in Great Britain .	25	0	0
COMMISSION appointing any manager or director, managers or directors, of or concerning any lottery or lotteries to be drawn pursuant to Act of Parliament	20	0	0
COMMISSION to take affidavits, or special bail, out of any Court of law or equity (*not being in any suit*, 5 Geo. IV. c. 41) . .	0	10	0
COMMISSION of bankrupt	0	5	0
COMMISSION of lunacy	0	5	0
COMMISSION of any other kind, issuing out of the High Court of			

(*a*) To be written upon the instrument, in England.

	Duty. £	s.	d.
COMMISSION—*continued.*			
Admiralty, the Courts of the Cinque Ports exercising admiralty jurisdiction, the High Court of Appeals in prize causes, or the High Court of Delegates in admiralty matters, in England; the Court of Admiralty in Ireland; any of the Ecclesiastical Courts, or the High Court of Delegates in ecclesiastical matters, in England or Ireland; or any Court of Law or Equity in England or Ireland; (*not being in any suit,* 5 Geo. IV. c. 41)	0	5	0
55 Geo. III c. 184, schedule, part 2, England; 5 & 6 Vict. c. 82, Ireland.			
COMMISSION to act as a notary public in Scotland.—See FACULTY.			
COMMISSION in the nature of a power of attorney in Scotland—See LETTER OF ATTORNEY.			
COMPOSITION to be paid by BANKERS licensed to issue or draw *unstamped promissory notes and bills* in England, and unstamped notes in Ireland, in lieu of the duties on such notes and bills;			
For every 100*l.* and also for the fractional part of 100*l.* of the average amount or value of such notes and bills in circulation during every half-year	0	3	6
9 Geo. IV. c. 23, England. 9 Geo. IV. cc. 23 & 80; 5 & 6 Vict. c. 82. } Ireland.			
COMPOSITION.—Deed or other instrument of composition between a debtor or debtors and his, her, or their creditors . .	1	15	0
And see PROGRESSIVE DUTY.			
CONDITIONAL surrender of any copyhold or customary estate by way of Mortgage.—See MORTGAGE.			
CONGÉ D'ÉLIRE.—See GRANT.			
CONSTAT of letters patent.—See EXEMPLIFICATION.			
CONTRACT.—See AGREEMENT.			
CONTRACT of excambion in Scotland.—See EXCHANGE.			
CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, *upon the sale* of any lands, tenements, rents, annuities, or *other property,* real or personal, heritable or moveable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property, that is to say, for and in respect of *the principal or only deed, instrument, or writing* whereby the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his, her, or their direction;			
Where the purchase or consideration money therein or thereupon expressed shall not exceed 25*l.*	0	2	6
And where the same shall exceed 25*l.* and not exceed 50*l.*	0	5	0
—— 50*l.* —— 75*l.*	0	7	6
—— 75*l.* —— 100*l.*	0	10	0
—— 100*l.* —— 125*l.*	0	12	6
—— 125*l.* —— 150*l.*	0	15	0
—— 150*l.* —— 175*l.*	0	17	6
—— 175*l.* —— 200*l.*	1	0	0
—— 200*l.* —— 225*l.*	1	2	6
—— 225*l.* —— 250*l.*	1	5	0
—— 250*l.* —— 275*l.*	1	7	6

CONVEYANCE—*continued.*	Duty. £	s.	d.
And where the same shall exceed 275*l.* and not exceed 300*l.*	1	10	0
——— 300*l.* ——— 350*l.*	1	15	0
——— 350*l.* ——— 400*l.*	2	0	0
——— 400*l.* ——— 450*l.*	2	5	0
——— 450*l.* ——— 500*l.*	2	10	0
——— 500*l.* ——— 550*l.*	2	15	0
——— 550*l.* ——— 600*l.*	3	0	0
And where the purchase or consideration money shall exceed 600*l.* then for every 100*l.* and also for any fractional part of 100*l.*	0	10	0
And it is hereby directed, that the purchase-money or consideration *shall be truly expressed and set forth in words at length* in or upon every such principal or only deed or instrument of conveyance; and where such consideration shall consist either wholly or in part of any *stock or security*, the value thereof respectively, to be ascertained as hereinafter mentioned, shall also be truly expressed and set forth in manner aforesaid in or upon every such deed or instrument; and such value shall be deemed and taken to be the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid.	Consideration to be expressed.		
And where the consideration or any part of the consideration shall be any *stock* in any of the public funds, or any government debenture or stock of the Bank of England or Bank of Ireland, or any debenture or stock of any corporation, company, society, or persons or person, payable only at the will of the debtor, the said duty shall be calculated (taking the same respectively,	If in stock, how duty to be calculated.		

TABLE of the *ad valorem* Duties on CONVEYANCES prior to the 11th October, 1850.

	48 G. III. c. 149, commencing 11th Oct. 1808.			55 G. III. c. 184, commencing 1st Sept. 1815.		
	£	s.	d.	£	s.	d.
CONSIDERATION not amounting to 20*l.*	0	15	0	0	10	0
Amounting to 20*l.* and " " 50*l.*	0	15	0	1	0	0
" 50*l.* " " 150*l.*	1	0	0	1	10	0
" 150*l.* " " 300*l.*	1	10	0	2	0	0
" 300*l.* " " 500*l.*	2	10	0	3	0	0
" 500*l.* " " 750*l.*	5	0	0	6	0	0
" 750*l.* " " 1,000*l.*	7	10	0	9	0	0
" 1,000*l.* " " 2,000*l.*	10	0	0	12	0	0
" 2,000*l.* " " 3,000*l.*	20	0	0	25	0	0
" 3,000*l.* " " 4,000*l.*	30	0	0	35	0	0
" 4,000*l.* " " 5,000*l.*	40	0	0	45	0	0
" 5,000*l.* " " 6,000*l.*	50	0	0	55	0	0
" 6,000*l.* " " 7,000*l.*	50	0	0	65	0	0
" 7,000*l.* " " 7,500*l.*	50	0	0	75	0	0
" 7,500*l.* " " 8,000*l.*	75	0	0	75	0	0
" 8,000*l.* " " 9,000*l.*	75	0	0	85	0	0
" 9,000*l.* " " 10,000*l.*	75	0	0	95	0	0
" 10,000*l.* " " 12,500*l.*	100	0	0	110	0	0
" 12,500*l.* " " 15,000*l.*	100	0	0	130	0	0
" 15,000*l.* " " 20,000*l.*	150	0	0	170	0	0
" 20,000*l.* " " 30,000*l.*	200	0	0	240	0	0
" 30,000*l.* " " 40,000*l.*	300	0	0	350	0	0
" 40,000*l.* " " 50,000*l.*	400	0	0	450	0	0
" 50,000*l.* " " 60,000*l.*	500	0	0	550	0	0
" 60,000*l.* " " 80,000*l.*	500	0	0	650	0	0
" 80,000*l.* " " 100,000*l.*	500	0	0	800	0	0
" 100,000*l.* or upwards	500	0	0	1000	0	0

CONVEYANCE—*continued.*

Duty. £ s. d.

whether constituting the whole or a part only of such consideration), according to the average selling price thereof respectively, on the day or on either of the ten days preceding the day of the date of the deed or instrument of conveyance, or if no sale shall have taken place within such ten days, then according to the average selling price thereof on the day of the last preceding sale; and if such consideration or part of such consideration shall be a mortgage, judgment, or bond, or a debenture, the amount whereof shall be recoverable by the holder, or any other security whatsoever, whether payable in money or otherwise, then such calculation shall be made according to the sum due thereon for both principal and interest.

NOTE.—For the foregoing duties on Conveyances, and the directions, see 13 & 14 Vict. c. 97. For the following directions, see 55 Geo. III. c. 184.

Property sold at one price, conveyed by several deeds.

And where any lands or other property, of *different tenures* or holdings, or held under *different titles*, contracted to be sold at *one entire price* for the whole, shall be conveyed to the purchaser in *separate parts* or parcels, by *different deeds* or instruments, the purchase or consideration money shall be divided and *apportioned* in such manner as the parties shall think fit, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto, which shall be charged with the said *ad valorem* duty in respect of the price or consideration money therein set forth.

Where sold to several at one price, and conveyed in parts by separate deeds.

And where any lands or other property, contracted to be *purchased by two or more persons jointly*, or by any person for himself and others, or wholly for others, at *one entire price* for the whole, *shall be conveyed in parts* or parcels *by separate deeds* or instruments to the persons for whom the same shall be purchased, *for distinct parts* or shares *of the purchase money*, the principal or only deed or instrument of conveyance, of each separate part or parcel, shall be charged with the said *ad valorem* duty, in respect of the sum of money therein specified as the consideration for the same. But *if separate parts* or parcels of such lands or other property *shall be conveyed to* or to the use of or in trust for *different persons*, in and *by one and the same deed* or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration moneys therein mentioned to be paid, or agreed to be paid, for the lands or property thereby conveyed.

Where separate parts conveyed to different persons in same deeds.

SUB-SALES. Conveyance by original seller to sub-purchaser.

And where any person, *having contracted for the purchase* of any lands or other property, but not having obtained a conveyance thereof, *shall contract to sell* to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser, the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money therein mentioned to be paid or agreed to be paid by the sub-purchaser.

To several sub-purchasers in parts.

And where any person, *having contracted for the purchase* of any lands or other property, but not having obtained a conveyance thereof, *shall contract to sell* the whole or any part or parts thereof, to any other person or persons, *and the same shall* in

CONVEYANCE—*continued.*

Duty. £ s. d.

consequence *be conveyed*, by the original seller, *to different persons*, in parts or parcels, the principal or only deed or instrument of conveyance of each part or parcel thereof shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same by the person or persons to whom or to whose use or in trust for whom the conveyance shall be made, without regard to the amount

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers, within the intent and meaning of the provisions and regulations of the 48 Geo. III. c. 149; and 56 Geo. III. c. 56, in England and Ireland, respectively, relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties in this TABLE.

Who to be deemed purchasers and sellers in sub-sales.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty in respect of the purchase or consideration money paid or agreed to be paid by him, and shall be duly stamped accordingly, any deed or instrument of conveyance to be afterwards made to him, of the property in question, by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the ordinary duty on deeds or instruments of the same kind, not upon a sale.

Conveyance by original seller to sub-purchaser, where not to be charged.

And where any lands or other property *separately contracted* to be purchased *of different persons*, at separate and distinct prices, *shall be conveyed* to the purchaser, or as he shall direct in and *by one and the same deed* or instrument, such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the *aggregate* amount of the purchase or consideration moneys therein mentioned to be paid or agreed to be paid for the same.

Conveyance by different sellers in same deed.

And where any lands or other property shall be sold and conveyed *in consideration*, wholly or in part, *of any sum of money charged thereon by way of mortgage*, wadset, or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, *subject to any mortgage*, wadset, bond, or other debt, or to any gross or entire sum of money to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid.

Where lands, &c., sold subject to mortgage, duty to be charged on mortgage money.

And to prevent doubts respecting what shall be deemed the principal deed or instrument of conveyance, in certain cases, it is hereby declared:—

PRINCIPAL DEED.

That where any lands or hereditaments, in England or Ireland, shall be conveyed by bargain and sale enrolled, and also by lease and release, or feoffment, with or without any such letter or letters of attorney therein contained as aforesaid, the release or feoffment shall be deemed the principal deed, and the bargain and sale shall be charged only with the duty hereby imposed on

Where by bargain and sale, and also by lease and release or feoffment.

CONVEYANCE—*continued.*

Duty. £ s. d.

deeds in general (*see Deed*). But the same shall not be enrolled or be available unless also stamped for testifying the payment of the *ad valorem* duty on the release or feoffment.

And where any lands or hereditaments shall be conveyed by lease and release, and also by feoffment, with or without any such letter or letters of attorney therein contained as aforesaid, the release shall be deemed the principal deed, and the feoffment shall be charged only with the duty hereby imposed on deeds in general (*see Deed*). But the same shall not be available unless also stamped for testifying the payment of the *ad valorem* duty on the release.

Where by lease and release, and also by feoffment.

And where any copyhold or customary estate shall be conveyed by a deed of bargain and sale, by the Commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will, or by Act of Parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

In copyhold. Where bargain and sale to be the principal.

And in other cases of copyhold or customary estates the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument.

Where surrender, grant, or copy.

And copies of court roll made after the 31st day of August, 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll of surrenders and voluntary grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

Surrenders, &c., before 1808.

And grants, and copies of court roll of grants, of copyhold or customary estates for a life or lives are to be charged, as well as those for any greater interest.

Grants for life to be charged.

And where in Scotland there shall be a disposition or assignation executed by the seller, and any other instrument or instruments, writing or writings, to complete the title, the disposition or assignation shall be deemed the principal instrument.

In Scotland. Disposition, &c.

And where, *upon the sale of any annuity or other right not before in existence*, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance.

ANNUITIES. Where only a bond, &c.

And in the case of LEASES or tacks, where a yearly rent of 20*l.* or upwards shall be reserved as part of the consideration for the same, there shall be charged a further duty:—for which see title LEASE.

LEASES. Duty on rent also.

And where there shall be several deeds, instruments, or writings for completing the title to the property sold, such of them as are not liable to the said *ad valorem* duty shall be charged with the duty to which the same may be liable under any general or particular description of such deeds, instruments, or writings contained in this Table.

SEVERAL INSTRUMENTS. How charged where not liable to *ad valorem* duty.

And where, *in any case not hereby expressly provided for*, of several deeds, instruments, or writings, a doubt shall arise which

Where par-

CONVEYANCE—*continued.*

Duty. £ s. d.

is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments, or writings, on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

ties may elect as to the principal instrument.

And where any deed or instrument, operating as a conveyance on the sale of any property, shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto, every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp duty as any separate deed containing the other matter would have been chargeable with, exclusive of the progressive duty.

Conveyance on sale with other matter in same deed.

And see PROGRESSIVE DUTY.

See also DUPLICATE OF COUNTERPART.

Progressive duty. Duplicate.

Exemptions from the preceding Duties on Conveyances upon the Sale of Lands, &c.

All surrenders and other instruments relating only to copyhold or customary estates whose clear yearly value shall not exceed 20s., but which are hereinafter otherwise charged.

All transfers of shares in the stock and funds of the governor and company of the Bank of England or the Bank of Ireland, and of the South Sea and East India Companies, but which are hereinafter otherwise charged.

All leases and tacks in consideration of a fine or grassum for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

See the qualification of this and the next following exemption in the exception under the title LEASE, so as to admit of the charge of *ad valorem* duty where it does not amount to 1*l.* 15*s.*

All leases in consideration of a fine for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor of any copyhold or customary lands or hereditaments for a life or lives for a pecuniary consideration, and the copies of court roll of such voluntary grants.

All which leases, tacks, grants, and copies are hereinafter charged with ordinary duty.

See also ANNUITY—repurchase of.

Exemptions from the preceding and all other Stamp Duties, except the Duty on the Receipt for the Consideration

Conveyances of rents purchased under the Act of the 34 Geo. III. c. 75, for the better management of the land revenue of the

	Duty. £ s. d.
CONVEYANCE—*continued.*	
Crown, and for the sale of fee farm and other unimprovable rents, upon subsequent sales thereof by the purchasers, or their heirs or assigns, to the owners of the lands or other hereditaments out of which the same are payable, where the consideration money to be paid on such subsequent sales shall not exceed the sum of 10l.	
Exemptions from the preceding and all other Stamp Duties.	
All transfers of shares in any of the government or parliamentary stocks or funds.	
See also GRANT, LEASE, *at the end of this part of the* TABLE.	
CONVEYANCE of any kind or description whatsoever, in England or Ireland, and charter disposition or contract containing the first original constitution of Feu and Ground Annual Rights in Scotland (not being a lease or tack for years), in consideration of any annual sum payable in perpetuity, or for any indefinite period, whether fee farm or other rent, feu duty, ground annual, or otherwise;	*The same duties as on a lease or tack for a term exceeding 100 years at a yearly rent equal to such*
Exemption.	
Any grant in fee-simple, or in perpetuity, made in Ireland in pursuance of the Renewable Leasehold Conversion Act, or in pursuance of the Trinity College (Dublin) Leasing and Perpetuity Act, 1851; *all which said grants shall be chargeable with the stamp duties to which the same were subject and liable before the passing of the Act* 16 *&* 17 *Vict. c.* 63, [*that is, the ordinary duty of* £1 15*s.*, *besides progressive duties*]	
And see DUPLICATE *or* COUNTERPART, *and* PROGRESSIVE DUTY.	
The last-mentioned duties on conveyances are imposed by the 17 *&* 18 *Vict. c.* 83.	
CONVEYANCE of lands belonging to the CROWN.—See GRANT.	
CONVEYANCE in trust for sale as a security.—See MORTGAGE.	
CONVEYANCE of the equity of redemption to a purchaser, in the same deed with a mortgage.—See MORTGAGE.	
CONVEYANCE of any kind whatever, *not otherwise charged nor expressly exempted from all stamp duty.*	1 15 0
And see PROGRESSIVE DUTY.	
COPY attested to be a true copy, in the form which hath been commonly used for that purpose, or in any other manner authenticated or declared to be a true copy, or made for the purpose of being given in evidence as a true copy, of any agreement, contract, bond, deed, or other instrument of conveyance, or any other deed whatever, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, or of any part thereof respectively.	
Where such a copy shall be made for the security or use of any person being a party to or taking any benefit or interest immediately under such agreement, contract, bond, deed, or other instrument	*The same duty or duties as for the original*
And where any such copy shall be made for the security or use of any person not being a party to or taking any benefit or interest immediately under such agreement, contract, bond, deed, or other instrument	0 1 0
And for every entire quantity of 720 words contained therein, over and above the first 720 words a further *progressive* duty of	0 1 0
And all copies which shall at any time be offered in evidence shall be deemed to have been made for that purpose;	

	Duty. £	s.	d.
COPY—*continued*			
Exemptions from the preceding and all other Stamp Duties.			
All copies attested or authenticated as aforesaid, which shall be made for the private use only of any person having the custody of the original instruments, or of his or her counsel, attorney or solicitor.			
COPY attested or authenticated as aforesaid, or made for the purpose of being given in evidence as a true copy of any original will, testament, or codicil, or of the probate or probate copy of any will or codicil, or of any letters of administration, or of any confirmation of a testament, testamentary or dative, or of any part thereof respectively	0	1	0
And for every entire quantity of 720 words contained in any such copy, over and above the first 720 words, a further *progressive* duty of	0	1	0
And all copies which shall at any time be offered in evidence shall be deemed to have been made for that purpose.			
The duties on copies of wills were repealed by 5 Geo. IV. c. 41.			
COPY or extract of any memorial, or of the register of any memorial, registered pursuant to any Act of Parliament made or to be made for the public registering of deeds and conveyances in England .	0	5	0
And for every piece of vellum, parchment, or paper upon which any such copy or extract shall be written, after the first, a further *progressive* duty of	0	5	0
For the duties in lieu of these copies in Ireland, see SEARCHES.			
COPY or extract of any deed or of any other instrument *not falling under the description of law proceedings,* which shall be made or taken from the rolls or records of any of Her Majesty's Courts at Westminster or in Dublin	0	2	0
And for every piece of vellum, parchment, or paper upon which any such copy or extract shall be written, after the first, a further *progressive* duty of	0	2	0
Attested COPY or extract of any deed, instrument, or writing given out from any public register or from the books or records of any Court in Scotland, *and not otherwise charged under the head of law proceedings* in the 55 Geo. III c. 184, schedule, part 2 .	0	2	6
And where the same shall contain more than 600 words, then for every entire quantity of 600 words contained therein, over and above the first 600 words, a further *progressive* duty of .	0	2	6
And for any less quantity of words contained therein, over and above the first 600 words, or over and above any second, third, or other full quantity of 600 words, a *further* duty of .	0	2	6
Exemptions from the preceding and all other Stamp Duties.			
Certified copies of proceedings and interlocutors required or authorized in cases of appeal to the House of Lords.			
Copies or extracts of protests upon bills or promissory notes for any sum under 40s. sterling.			
Extracts of commissions of persons as delegates or representatives to the General Assembly or to any Presbytery or Church Court in Scotland, and of commissions of delegates to the convention of royal burghs, and of commissions of delegates from any royal burgh for the election of members of Parliament.			
COPYHOLD Estates, and CUSTOMARY Estates, passing by surrender and admittance, or by admittance only, and not by deed; INSTRUMENTS relating thereto, *upon the sale or mortgage* of any such estates; that is to say,			

	Duty. £	s.	d.
COPYHOLD—*continued.*			
Any ADMITTANCE out of Court, or the memorandum thereof, or the copy of court roll of any admittance in Court	0	2	6
And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words, a further progressive duty of 13 & 14 Vict. c. 97.	0	2	6
COPYHOLD Estates and CUSTOMARY Estates, passing by surrender and admittance, or by admittance only, and not by deed; INSTRUMENTS relating thereto, *not otherwise charged, as above, nor under the head of mortgage, or of conveyance upon the sale of lands; viz.:—*			
Any SURRENDER made out of Court, or the memorandum thereof, where the clear yearly value of the estate shall exceed 20*s.* .	1	0	0
And where the same shall not exceed 20*s.* . .	0	5	0
See also CONVEYANCE *upon the sale of lands, &c., and* MORTGAGE.			
Any ADMITTANCE out of Court, or the memorandum thereof, where the clear yearly value of the estate shall exceed 20*s.* . .	1	0	0
And where the same shall not exceed 20*s.* . .	0	5	0
And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid in respect to each surrender and each admittance,			
And see PROGRESSIVE DUTY.			
The COPY of COURT ROLL of any surrender made in Court, where the clear yearly value of the estate shall exceed 20*s.* . .	1	0	0
And where the same shall not exceed 20*s.* . . .	0	5	0
See also CONVEYANCE *upon the sale of lands, &c, and* MORTGAGE.			
The COPY of COURT ROLL of any admittance in Court, where the clear yearly value of the estate shall exceed 20*s.* . .	1	0	0
And where the same shall not exceed 20*s.* . .	0	5	0
And where copies of both a surrender and admittance, or of more than one surrender or admittance, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid in respect of each surrender and each admittance, except in the case of a recovery hereinafter provided for.			
And see PROGRESSIVE DUTY.			
The COPY of COURT ROLL of the several surrenders, admittances, and other acts which shall take place in Court for the purpose of perfecting a COMMON RECOVERY of any entailed copyhold or customary estate or estates, tenement or tenements, from the surrender to make a tenant to the præcipe down to the admittance of the tenant in tail in fee, or to the admittance for life of the former tenant for life, with remainder to the tenant in tail in fee, upon the surrender of the demandant, both inclusive, or from the surrender to make a tenant to the præcipe, inclusive, to the admittance of the tenant in tail or tenant for life, otherwise than as aforesaid, or to the admittance of any other person upon the surrender of the demandant, exclusive, where the clear yearly value of the estate shall exceed 20*s*	Five times. 1	0	0
And where the same shall not exceed 20*s.* .	Five times. 0	5	0

	Duty £ s. d
COPYHOLD—*continued.*	
And if the copy of Court Roll of any other admittance or surrender, admittances or surrenders, shall be contained in the same piece of vellum, parchment, or paper, with the copy of Court Roll of the several surrenders, admittances, and other acts for the purpose aforesaid, the same shall be charged with such and the same duty or duties as if the same had been written upon a separate piece of vellum, parchment, or paper, over and above the said duties hereby imposed on the copy of Court Roll of the recovery	
Any VOLUNTARY GRANT by the lord or lady, or steward, of any manor, made out of Court, or the memorandum thereof, with or without admittance thereon,—where the clear yearly value of the estate shall exceed 20*s.*	Twice 1 0 0
And where the same shall not exceed 20*s.*	Twice 0 5 0
See also CONVEYANCE *upon the sale of lands, &c*, *and* MORTGAGE	
The COPY of COURT ROLL of any voluntary grant made in Court, by the lord or lady, or steward, of any manor, with or without admittance thereon,—where the clear yearly value of the estate shall exceed 20*s*	Twice 1 0 0
And where the same shall not exceed 20*s*	Twice. 0 5 0
See also CONVEYANCE *upon the sale of lands, &c*, *and* MORTGAGE	
And as to any such voluntary grant, or the memorandum, or copy of Court Roll thereof, See PROGRESSIVE DUTY.	
Any LICENCE to demise, or the memorandum thereof, if granted out of Court, and the COPY of COURT ROLL of any licence to demise, if granted in Court,—where the clear yearly value of the estate to be demised shall be expressed in such licence and shall not exceed 75*l*	*The same duty as on a lease at a yearly rent equal to such yearly value under the 13 & 14 Vict c 97 (see LEASE not exceeding 35 years)*
And in all other cases	0 10 0
Exemptions from the preceding and all other Stamp Duties	
Original surrenders out of Court, and copies of Court Roll of surrenders in Court to the uses of a will, or to a trustee for the uses or purposes of a will	
The Court Rolls or books of any manor, wherein the proceedings relating thereto shall be entered or minuted	
See also the GENERAL EXEMPTIONS *at the end of this part of the* TABLE	
COPYRIGHT of design —See CERTIFICATE	
CORPORATION or Company —See ADMISSION	
COUNTERPART.—See DUPLICATE	
COVENANT —Any *separate* deed of covenant, made on the sale or mortgage of any freehold, leasehold, copyhold, or customary estate, or of any right or interest therein (*the same not being a deed chargeable with* ad valorem *duty under the head of* CONVEYANCE *in this* Table) for the conveyance, assignment, surrender, or release of such estate right, or interest, or for the title to, or quiet enjoyment, freedom from incumbrances, or further assurance of, the same estate,	

Duty.
£ s. d.

COVENANT—*continued.*

right, or interest, or otherwise by way of indemnity in respect of the same, or for the production of the title deeds or muniments of title relating thereto, or for all or any of those purposes;

Where the *ad valorem* duty on the purchase-money or consideration or on the mortgage money shall not exceed the sum of 10*s.* . . . . . *A duty equal to the amount of such* ad valorem *duty.*

And where the same shall exceed that amount . . . 0 10 0

And see PROGRESSIVE DUTY.

COVENANT.—Any deed containing a covenant for the payment or repayment of any sum or sums of money, or for the transfer or retransfer of any share or shares in the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of any other company or corporation, in any case where a mortgage, if made for the like purpose, would be chargeable with any *ad valorem* duty exceeding in amount the sum of 1*l.* 15*s.*;—or for the payment of any annuity, or any sums at stated periods in any case where a bond for the like purpose would be chargeable with any such duty . . . . *The same* ad valorem *duty as on a mortgage or bond respectively for the like purpose.*

And see PROGRESSIVE DUTY.

Provided always, that where any covenant shall be made as an *additional or further security* for the payment or repayment, transfer or retransfer of any sum or sums of money, or any share or shares in any of the said stocks or funds, or for the payment of any annuity or sums at stated periods, at the same time or already or previously secured by any bond or other instrument mentioned and referred to by the deed containing such covenant, and chargeable with and which shall have paid the proper *ad valorem* duty under the head of BOND or MORTGAGE, or (as respects any annuity) under the head of CONVEYANCE, respectively in this TABLE, or under any Act or Acts in force at the date thereof, in respect of the same sum or sums, share or shares, the said *ad valorem* duty hereby charged *shall not be payable* upon or in respect of such covenant; and if required for the sake of evidence the deed containing such covenant shall, on the same and such bond or other instrument being produced duly stamped in other respects, be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty hereby charged.

Exemptions from the preceding ad valorem *duty, but not from any other duty to which the same may be liable.*

Any Covenant contained in any deed chargeable with any duty under the head of MORTGAGE *in the schedule to the* 13 *&* 14 *Vict. c.* 97 (as in this TABLE), *or in any deed exempted from the* ad valorem *duty on mortgages by the Act* 3 *Geo. IV. c.* 117, *such deeds hereby exempted operating as a security by way of mortgage, or as a transfer, assignment, disposition, or assignation, hereinafter, charged, for the same sum or sums of money, or share or shares in any of the said stocks or funds, which is or are the subject of such covenant.*

Also any Covenant contained in any deed chargeable with any duty under the head of SETTLEMENT *in the said schedule* (and as in this TABLE), *in respect of the same sum or sums of money,*

	Duty £	s.	d.
COVENANT—*continued.*			
or share or shares in any of the said stocks or funds, which is or are the subject of such covenant.			
The duties under the head of COVENANT are imposed by the 13 & 14 Vict. c. 97.			
Perpetual CURACY.—See LICENCE—NOMINATION.			
CUSTOMARY estates.—See COPYHOLD.			
DEBENTURE or CERTIFICATE, for entitling any person to receive any drawback of any duty or duties, or part of any duty or duties, of customs or excise, or any bounty payable out of the revenue of customs or excise, for or in respect of any goods, wares, or merchandise exported, or shipped to be exported, from any part of the United Kingdom, to any part beyond the sea;			
Where the drawback or bounty to be received shall not exceed 10*l.*	0	1	0
Where the same shall exceed 10*l.*, and not exceed 50*l.* .	0	2	6
And where the same shall exceed 50*l.* . . .	0	5	0
16 & 17 Vict. c. 59.			
Exemptions from the preceding and all other stamp duties.			
All debentures or certificates for bounty which were before the 55 *Geo. III. c.* 184, *exempted from stamp duty by any Act or Acts of Parliament granting a bounty on the exportation of linens or sail cloth.*			
DECLARATION of any use or trust, uses or trusts, of or concerning any estate or property, real or personal, where made by any writing not being a deed or will, *not otherwise charged* . .	1	15	0
If made by deed.—See DEED. And see PROGRESSIVE DUTY.			
DECREET arbitral.—See AWARD.			
DEED, whereby any real burden shall be declared or created on lands or heritable subjects in Scotland.—See MORTGAGE—DISPOSITION.			
DEED containing an obligation to infeft any person in heritable subjects in Scotland, under a clause of reversion, as a security for money, but without any personal bond or obligation therein for payment of the money intended to be secured.—See MORTGAGE.			
DEED of any kind whatever, *not otherwise charged nor expressly exempted from all stamp duty*	1	15	0
And see PROGRESSIVE DUTY.			
Exemptions.			
Deeds and instruments executed in Ireland, whereby any person shall become bound, or agree to submit any matter in dispute, the amount or value whereof shall be under 20*l.*, *to arbitration.* 5 *&* 6 *Will. IV. c.* 64, *s.* 1; 5 *&* 6 *Vict. c.* 82, *s.* 5.			
DEFEAZANCE.—Deed, or other instrument of defeazance, of any conveyance, disposition, assignation, or tack, apparently absolute, but intended only as a security for money or stock.—See MORTGAGE.			
DEGREE —See ADMISSION—TESTIMONIAL.			
DEPOSIT of title deeds.—See MORTGAGE.			
DEPUTATION by the Commissioners of Excise.—See COMMISSION.			
DEPUTATION or appointment of a gamekeeper . .	1	15	0
DESIGN, copyright of.—See CERTIFICATE.			
DICE.—See CARDS AND DICE.			
DIGNITY.—See ECCLESIASTICAL BENEFICE—GRANT.			
DISCHARGE for money.—See RECEIPT.			

	Duty. £	s.	d.
DISPENSATION for holding two ecclesiastical dignities or benefices, or a dignity and a benefice in England, where either of them shall be above the yearly value of 10*l.* in the King's books, . .	40	0	0
And in all other cases	25	0	0
DISPENSATION of any other kind, from the Archbishop of Canterbury, or the Master of the Faculties, for the time being, or from the Guardian of the Spiritualties during a vacancy of the Archbishop's see	40	0	0
DISPENSATION, faculty, or other instrument for admitting or authorizing any person to act as a *notary public in Ireland* . .	20	0	0
DISPENSATION for holding two ecclesiastical dignities or benefices or a dignity and a benefice in Ireland . . .	25	0	0
DISPENSATION or faculty of any kind, in Ireland, *not otherwise charged*	25	0	0
5 & 6 Vict. c. 82.—Dispensations in Ireland.			
DISPOSITION of lands or heritable subjects in Scotland to singular successors or purchasers.—See CONVEYANCE.			
DISPOSITION of lands or other heritable subjects in Scotland to a purchaser, containing a clause declaring all or any part of the purchase-money a real burden upon or affecting the lands or heritable subjects thereby disponed, or any part thereof;			
Such disposition shall be charged, not only with the *ad valorem and progressive* duties charged on a conveyance upon the sale of lands or heritable subjects in Scotland, but also with the *ad valorem* duty charged on any deed creating a real burden on lands in Scotland.—See CONVEYANCE—MORTGAGE.			
DISPOSITION in security, in Scotland.—See MORTGAGE.			
DISPOSITION of any wadset, heritable bond, &c.—See MORTGAGE.			
DISPOSITION of any lands or other property, heritable or moveable, in Scotland, or of any right or interest therein, *not otherwise charged*	1	15	0
And see PROGRESSIVE DUTY.			
DOCQUET made on passing under the Great Seal of the United Kingdom any grant, letters patent, exemplification, constat, or other instrument requiring a docquet	0	2	0
DOCTOR of medicine in Scotland.—See ADMISSION.			
DONATION, or presentation, by whomsoever made, of or to any ecclesiastical benefice, dignity, or promotion in England or Ireland .	5	0	0
And where the net yearly value of such benefice, dignity, or promotion shall amount to 300*l.* or upwards, then for every 100*l.* thereof, over and above the first 200*l.* a further duty of .	5	0	0
The value to be ascertained as in the case of "COLLATION," and with the same proviso;			
5 & 6 Vict. c. 79 } 6 & 7 Vict. c. 72 } England.			
5 & 6 Vict. c. 82—Ireland.			
DRAFT for money.—See BILL of EXCHANGE.			
DRAWBACK.—See CERTIFICATE—DEBENTURE.			
DUPLICATE or COUNTERPART of any deed or instrument, of any description whatever, chargeable with any stamp duty or duties, under any Act or Acts in force;			

	Duty. £ s. d.
DUPLICATE or COUNTERPART—*continued.*	
Where such stamp duty or duties chargeable as aforesaid (*exclusive of progressive duty*) shall not amount to the sum of five shillings	*The same duty or duties as shall be chargeable on the original deed or instrument, including the progressive duty thereon (if any).*
And where the same (*exclusive as aforesaid*) shall amount to the sum of five shillings or upwards . . .	0 5 0
And where in the latter case any such deed or instrument, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, such duplicate or counterpart shall be charged with the further *progressive* duty of	0 2 6
Provided always, that in such latter case the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument, which said particular stamp shall be impressed upon such duplicate or counterpart, on the same being produced, together with the original deed or instrument, and on the whole being duly executed and duly stamped in all other respects.	
From this proviso is the following exception, viz., the counterpart of any lease of lands, tenements, or hereditaments being duly stamped with the said stamp duty of 5*s.*, or any higher stamp duty (exclusive of progressive duty), and not being executed or signed by or on the behalf of any lessor or grantor; 16 & 17 Vict. c. 59, s. 12.	
The duties on DUPLICATES and COUNTERPARTS are imposed by the 13 & 14 Vict. c. 97.	
ECCLESIASTICAL benefice.—See COLLATION—DISPENSATION—DONATION—INSTITUTION—LICENCE—NOMINATION.	
EIK to a reversion.—See MORTGAGE.	
EXCHANGE.—Any deed, whereby any lands or other hereditaments or heritable subjects in England, Scotland, or Ireland, shall be conveyed, or any copyhold or customary lands or hereditaments in England shall be covenanted to be surrendered, in exchange for other lands or hereditaments or heritable subjects;	
If no sum of money, or only a sum under 300*l.*, shall be paid or agreed to be paid for equality of exchange; the ordinary duty of	1 15 0
And if a sum of 300*l.* or upwards shall be paid or agreed to be paid for equality of exchange . . .	*The same* ad valorem *duty as for a conveyance on the sale of lands for a sum of money equal to the sum so paid or agreed to be paid.*
See also DUPLICATE or COUNTERPART. And see PROGRESSIVE DUTY.	
NOTE.—*A duplicate of a deed of Exchange was, before the* 13 & 14 *Vict. c.* 97, *charged with the same duty as the original.*	
And in case there shall be more than one deed for completing the title to the lands or other hereditaments or heritable subjects conveyed by either party, the principal deed only shall be charged under this head of exchange; and any subordinate or	

	Duty. £	s.	d.
EXCHANGE—*continued.* collateral deed shall be charged with the duty to which it may be liable under any other description in this TABLE.			
EXCISE Officers.—See COMMISSION.			
EXEMPLIFICATION or constat, under the Great Seal of the United Kingdom of Great Britain and Ireland, of any letters patent or grant made or to be made by Her Majesty, her heirs or successors, or by any of her royal predecessors, of any honour, dignity, promotion, franchise, liberty, or privilege, or of any lands, office, or other thing whatsoever;			
For every skin, sheet, or piece of vellum, parchment, or paper, upon which any such exemplification or constat shall be written	5	0	0
EXEMPLIFICATION under the seal of the High Court of Admiralty, the Courts of the Cinque Ports exercising admiralty jurisdiction, the High Court of Appeals in prize causes, the High Court of Delegates in admiralty matters in England; the Court of Admiralty in Ireland; any of the Ecclesiastical Courts, or the High Court of Delegates in ecclesiastical matters, in England or Ireland; or any Court of Law or Equity in England or Ireland; of any record or proceeding therein	3	0	0
55 Geo. III. c. 182, schedule, part 2,—England.			
5 & 6 Vict. c. 82,—Ireland.			
EXTRACTS from registers and records in England, Scotland, and Ireland respectively.—See COPY—SEARCHES.			
FACTORY, in the nature of a power of attorney in Scotland.—See LETTER OF ATTORNEY.			
FACULTY, licence, or commission, for admitting or authorizing any person to act as a *notary public in England* . . .	30	0	0
FACULTY, licence, or commission, for admitting or authorizing any person to act as a *notary public in Scotland* . . .	20	0	0
FACULTY from the Archbishop of Canterbury, or the Master of the Faculties for the time being, or from the Guardian of the Spiritualties during a vacancy of the Archbishop's See, *not otherwise charged*	30	0	0
FEOFFMENT of lands or other hereditaments in England or Ireland, upon the *sale or mortgage* thereof.—See CONVEYANCE—MORTGAGE.			
FEOFFMENT of lands or other hereditaments in England or Ireland, *not otherwise charged*	1	15	0
And where the same shall contain any letter or letters of attorney to deliver or receive seisin, a *further* duty of . .	1	15	0
And see PROGRESSIVE DUTY.			
FEU DUTY, conveyance in consideration of.—See CONVEYANCE.			
FIRE INSURANCE.—See POLICY.			
FRANCHISE, grant of.—See GRANT.			
FREEMAN.—See ADMISSION.			
FURTHER CHARGE—FURTHER SECURITY, or FURTHER ASSURANCE.—See MORTGAGE.			
GAMEKEEPER.—See DEPUTATION.			
GIFT of *ultimus hæres*, bastardy, escheat, or forfeitures in Scotland.—See GRANT.			
GIFT of the vacant stipend of any parish in Scotland, whereof the presentation to the church shall belong to the Crown . .	1	10	0

	Duty. £	s.	d.
GOLD and SILVER plate.—See PLATE.			
GRANT, or letters patent, under the Great Seal of the United Kingdom of Great Britain and Ireland, or the Great Seal of Ireland, or the seal of the duchy or county palatine of Lancaster, or under the seal kept and used in Scotland in place of the Great Seal formerly used there;			
Of the honour or dignity of a duke . . .	350	0	0
——— of a marquis . . .	300	0	0
——— of an earl . . .	250	0	0
——— of a viscount . . .	200	0	0
——— of a baron . . .	150	0	0
——— of a baronet . . .	100	0	0
——— of an archbishop in Ireland . .	150	0	0
——— of a bishop in Ireland . .	100	0	0
Of a *congé d'élire* to any dean and chapter for the election of an archbishop or bishop	30	0	0
Of the royal assent to or signification of the election made by any dean and chapter, or of the nomination and presentation by Her Majesty, her heirs or successors, in default of such election, of any person to be an archbishop or bishop . .	30	0	0
Of or for the restitution of the temporalties to any archbishop or bishop	30	0	0
Of any other honour, dignity, or promotion whatsoever, or of any franchise, liberty, or privilege, to any person or persons, body or bodies politic or corporate	30	0	0
And where two or more honours or dignities shall be granted by the same letters patent to the same person, such letters patent shall be charged with the proper duty in respect of the highest in point of rank only.			
And where any honour or dignity, honours or dignities, shall be granted to any person or persons in remainder, the letters patent shall be charged with such further duty in respect of every remainder as would have been payable for an original grant of the same honour or dignity, honours or dignities.			
And where any such grant or letters patent shall be contained in more than one skin, sheet, or piece of vellum, parchment, or paper, then for every skin, sheet or piece thereof, after the first, a further *progressive* duty of . . .	20	0	0
Exemptions from the preceding and all other Stamp Duties.			
Commissions of rebellion in process.			
Letters patent or briefs for collecting charitable benevolences.			
Letters patent for confirming any dispensation hereinbefore charged with a duty.			
Letters patent appointing sheriffs in England or Ireland, and the writs of assistance accompanying such letters patent.			
GRANT or warrant of *precedence* to take rank among nobility, under the sign manual of Her Majesty, her heirs or successors .	100	0	0
GRANT or licence under the sign manual to take and use a *surname and arms*, or a surname only, in compliance with the injunctions of any will or settlement	50	0	0
GRANT or licence under the sign manual to take and use a *surname and arms*, or a surname only, upon any voluntary application .	10	0	0
GRANT of ARMS or armorial ensigns only, under the sign manual, or by any of the Kings of Arms of England, Scotland, or Ireland	10	0	0

	Duty. £ s. d.
GRANT, lease or tack under the Great Seal of the United Kingdom of Great Britain and Ireland, or the Great Seal of Ireland, or the seal of the Exchequer in England, or the seal of the duchy or county palatine of Lancaster, or the seal kept and used in Scotland in place of the Great Seal formerly used there; or under the Privy Seal in England, or the Quarter Seal or Privy Seal in Scotland, unless directed to the Great Seal; or under the royal sign manual of Her Majesty, her heirs or successors, unless directed to any of the seals aforesaid;	
Of any lands, tenements, hereditaments, or heritable subjects, whatever the tenure thereof may be, which have or shall come to Her Majesty, her heirs or successors, by *escheat* or *forfeiture*, or as *ultimus hæres*, or by reason of the same being purchased by or for any *alien*; or which Her Majesty, her heirs or successors, is or shall be otherwise entitled to in right of the Crown, and be authorized to dispose of *absolutely*, as she or they shall think fit; whether such grant, lease, or tack shall be in fee or fee tail, or for term of life or years;	
Or of any lands, tenements, hereditaments, or heritable subjects belonging to the Duchy of Lancaster, or belonging to the Crown in Scotland, whereof Her Majesty, her heirs or successors, is or shall be authorized to make only certain *limited* grants, leases, or tacks; whether such grant, lease, or tack shall be for term of life or years;	
Or of any goods, chattels, or personal or moveable estate, or other profit, whereof the grant is not otherwise charged;	
Where such grant, lease, or tack shall be intended to operate in any degree as a gift, *except in the cases next hereinafter mentioned*, then for every skin, sheet, or piece of vellum, parchment, or paper upon which the same shall be written, a duty of	30 0 0
And where any such grant, lease, or tack, operating as a gift, shall be of lands or other hereditaments or heritable subjects vested in Her Majesty, her heirs or successors, by *escheat* or as *ultimus hæres*, for want of heirs of any person, who was a *bare trustee* thereof, or seised into the hands of the Crown upon any *outlawry* in a civil action at the suit of any of Her Majesty's subjects	1 15 0
And see PROGRESSIVE DUTY.	
And where any such grant, lease, or tack shall be made for what shall be deemed and intended as a *full and adequate consideration* for the same, either in money paid at once, or in rent, or in lands or hereditaments given in exchange, or otherwise	*The same duty as on a grant, lease, or tack of the like description made by any of Her Majesty's subjects.*
GRANT or conveyance under the seal of the duchy of Lancaster, made in pursuance of the Act passed in the 19 Geo. III. c. 45, for enabling the chancellor and council of the duchy to sell certain rents, and to enfranchise copyhold and customary tenements within their survey . . .	*The same duty as for any other conveyance upon the sale of any property for a consideration of the like amount.*—See CONVEYANCE.

	Duty. £ s. d.
GRANT—*continued.*	
Exemptions from the preceding and all other Stamp Duties, except the Duty on the Receipt for the Consideration Money.	
All grants and conveyances under the seal of the duchy of Lancaster, made in pursuance of the said Act of the 19 *Geo. III., where the consideration money paid for the same shall not exceed* 10*l.*	
GRANT, lease, or other conveyance from Her Majesty, her heirs or successors, of any lands, tenements, or hereditaments, or of any personal estate, being respectively *the private property* of Her Majesty, her heirs or successors, and subject to her or their absolute disposal, by virtue of the Act passed in the 40 Geo. III., concerning the disposition of certain real and personal property of Her Majesty, her heirs or successors . . .	*The same duty as on a grant, lease, or conveyance of the like description, from any of Her Majesty's subjects.*
GRANT under the Great Seal of the United Kingdom of Great Britain and Ireland, or the Great Seal of Ireland, or the seal kept and used in Scotland in place of the Great Seal formerly used there; or under the Privy Seal in England, or the Quarter Seal or Privy Seal in Scotland, unless directed to the Great Seal: or under the sign manual of Her Majesty, her heirs or successors, unless directed to any of the seals aforesaid; out of the civil list, or out of any other fund, not being part of the supplies of the year, or appropriated by Parliament;	
Of any definite and certain *sum or sums of money,*	
Not amounting to 100*l.* . . .	1 10 0
Amounting to 100*l.* and not amounting to 250*l.* . .	4 0 0
——— 250*l.* ——— 500*l.* . .	10 0 0
——— 500*l.* ——— 750*l.* . .	20 0 0
——— 750*l.* ——— 1000*l.* . .	30 0 0
———1000*l.* or upwards; for every 100*l.* thereof .	5 0 0
Or of any *annuity or pension,*	
Not amounting to 100*l. per annum* . . .	1 10 0
Amounting to 100*l.* and not amounting to 200*l. per annum* .	4 0 0
——— 200*l.* ——— 400*l.* ——— .	10 0 0
——— 400*l.* ——— 600*l.* ——— .	20 0 0
——— 600*l.* ——— 800*l.* ——— .	30 0 0
——— 800*l.* ——— 1000*l.* ——— .	40 0 0
———1000*l. per annum* or upwards . .	50 0 0
But where any such grant of an annuity or pension shall be made in confirmation, or by way of renewal only, of any former grant of the like amount and description, then only a duty of .	1 10 0
And where *several and distinct* annuities or pensions shall be granted to or for the benefit of *different persons* by the same instrument, the proper duty shall be charged in respect of *each* annuity or pension; but where the grant shall be of any annuity or pension to or for the benefit of two or more persons jointly, the duty shall be charged in respect of the whole.	
GRANT or appointment *by Her Majesty,* her heirs or successors, or *by any other person* or persons, body politic or corporate, of or to *any office or employment,* by letters patent, deed, or other writing;	
Where the salary, fees, and emoluments appertaining thereto shall not amount to 50*l. per annum* . . .	2 0 0

	Duty. £	s.	d.
GRANT—*continued.*			
Where the same shall amount to 50*l.* and not to 100*l.* *per an.*	4	0	0
——— 100*l.* ——— 200*l.* ———	6	0	0
——— 200*l.* ——— 300*l.* ———	12	0	0
——— 300*l.* ——— 500*l.* ———	25	0	0
——— 500*l.* ——— 750*l.* ———	35	0	0
——— 750*l.* ——— 1000*l.* ———	50	0	0
——— 1000*l.* ——— 1500*l.* ———	75	0	0
——— 1500*l.* ——— 2000*l.* ———	100	0	0
——— 2000*l.* ——— 3000*l.* ———	150	0	0
——— 3000 *per annum* or upwards .	200	0	0

The said fees and emoluments to be estimated according to the average amount thereof for three years preceding, where practicable; and in other cases according to the best information that can be obtained.

And where any such grant or appointment shall be made to or of two or more persons jointly, with separate and distinct salaries, fees, or emoluments, the same shall be charged with a separate and distinct duty in respect of each person, according to the amount of the salary, fees, and emoluments appertaining to such person.

Provided always, that no duty shall be charged in respect of any person to whom any office or employment shall be granted anew, upon the revocation of any former grant or appointment thereof, and who shall have paid a stamp duty on such former grant or appointment, unless the salary, fees, and emoluments apportaining to such person shall be in any manner augmented: and in that case a duty shall be charged, in respect of such person, only in proportion to the amount of the augmentation.

It is provided, by the 3 Geo. IV. c. 117, s. 4, that in all cases of promotion from one office or employment in the Customs, in respect of which the *ad valorem* duty has been paid, to another, the duty shall be charged in respect of the increase, only, of the salary, fees, or emoluments: unless such increase be equal in amount to the original salary; in which case the full *ad valorem* duty is to be paid,

NOTE.—*Grants of money or of office are not chargeable with* progressive *duty.*

Exemptions.

Re-grant to any person, on the demise of the Crown, of any office or employment, pension, rank, or precedence, held or enjoyed by such person during the pleasure of the Crown.—1 *Will. IV. c.* 43.

Appointment of a surveyor of the highways.—5 *&* 6 *Will. IV. c.* 50, *s.* 9.

Appointment of any paid officer engaged in the administration of the Poor Laws; or in the management or collection of the poor rate,—4 *&* 5 *Will. IV. c.* 76. *s.* 86.

GRANT by copy of Court Roll.—See CONVEYANCE—COPYHOLD.

GRANT upon the sale of any property not belonging to the Crown.—See CONVEYANCE.

GRANT of the custody of the person or estate of any lunatic . 2 0 0

55 Geo. III. c. 184, schedule, part 2—Great Britain.
5 & 6 Vict. c. 82—Ireland.

	Duty. £	s.	d.
HAWKERS and PEDLARS.—See LICENCE.			
HERITABLE BOND.—See BOND—MORTGAGE.			
HONOUR or DIGNITY.—See GRANT.			
INDENTURE of Apprenticeship.—See APPRENTICESHIP.			
INDENTURES or chirograph of a fine levied in any Court, *for each part or indenture.*	2	0	0
55 Geo. III. c. 184, schedule, part 2.			
INNS of COURT.—See ADMISSION.			
INSTITUTION granted by any archbishop, bishop, chancellor, or other ordinary, or by any Ecclesiastical Court, to any ecclesiastical benefice, dignity, or promotion in England or Ireland;			
Where the same shall proceed upon a presentation . .	2	0	0
And where it shall proceed upon the petition of the patron to be himself admitted and instituted	7	0	0
And if, in the latter case, the net yearly value of such benefice, dignity, or promotion shall amount to 300*l.* or upwards, then, for every 100*l.* thereof, over and above the first 200*l.* a further duty of	5	0	0
The value to be ascertained as in the case of COLLATION.			
5 & 6 Vict. c. 79 } England.			
6 & 7 Vict. c. 72 } England.			
5 & 6 Vict. c. 82—Ireland.			
INSTITUTION by any presbytery, or other competent authority, to ecclesiastical benefices in Scotland.—See COLLATION.			
INSURANCE.—See POLICY.			
INVENTORY filed or exhibited in the High Court of Admiralty, the Courts of the Cinque Ports exercising Admiralty Jurisdiction, the High Court of Appeal in prize causes, the High Court of Delegates in admiralty matters in England; the Court of Admiralty in Ireland; or in any of the Ecclesiastical Courts, or the High Court of Delegates in ecclesiastical matters in England or Ireland; *not being in any suit*	0	5	0
55 Geo. III. c. 184; schedule, part 2.			
INVENTORY.—See SCHEDULE.			
LAND TAX.—Instruments relating to the redemption and sale thereof. —*See the General Exemptions at the end of this part of the* TABLE.			
LEASES or tacks of lands, &c., belonging to Her Majesty, in right of the Crown or otherwise.—See GRANT.			
LEASES or tacks of lands, &c., not belonging to Her Majesty, viz.:			
LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects, granted *in consideration of a sum of money by way of fine*, premium, or grassum paid for the same, *without any yearly rent, or with any yearly rent under* 20*l.* . .	*The same duty as for a conveyance on the sale of lands for a sum of money of the same amount.*		
For the duty thereon, see CONVEYANCE.			
(*Save and except leases and tacks for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole, where the duties on such leases and tacks respectively would, under the*			

LEASE—*continued.*

provisions of the 13 & 14 *Vict. c.* 97, [*as in this Table,*] *amount to* 1*l* 15*s. or upwards* (*a*)).

	Duty. £	s.	d.
LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects *at a yearly rent, without* any sum of money by way of *fine,* premium, or grassum paid for the same;			
Where the yearly rent shall not exceed 5*l.* . . .	0	0	6
And where the same shall exceed 5*l.* and not exceed 10*l.* .	0	1	0
——— 10*l.* ——— 15*l.*	0	1	6
——— 15*l.* ——— 20*l.* .	0	2	0
——— 20*l.* ——— 25*l.* .	0	2	6
——— 25*l.* ——— 50*l.* .	0	5	0
——— 50*l.* ——— 75*l.* .	0	7	6
——— 75*l* ——— 100*l.* .	0	10	0
And where the same shall exceed 100*l.*, then for every 50*l.*, and also for any fractional part of 50*l.*	0	5	0

LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects granted *in consideration of a sum of money by way of fine,* premium, or grassum, *and also of a yearly rent* amounting to 20*l* or upwards . . . . .
Save and except the leases and tacks hereinbefore excepted.

Both the ad valorem *duties payable for a lease in consideration of a fine only and for a lease in consideration of a rent only of the same amount*

The foregoing duties are those imposed by the 13 & 14 Vict. c. 97, on all leases or tacks, but which are now confined to leases or tacks for terms not exceeding thirty-five years.

LEASE or TACK of any lands, tenements, hereditaments, or heritable subjects, *for any term of years exceeding thirty-five,* at a yearly rent, with or without any sum of money by way of fine, premium, or grassum paid for the same, the following duties in respect of such yearly rent,

	DUTIES. If the Term shall not exceed 100 years £	s.	d.	If the Term shall exceed 100 years. £	s.	d.
Where the yearly rent shall not exceed 5*l.* . .	0	3	0	0	6	0
And where the same shall exceed . . 5*l* and not exceed 10*l.*	0	6	0	0	12	0
——— 10*l.* ——— 15*l.*	0	9	0	0	18	0
——— 15*l* ——— 20*l*	0	12	0	1	4	0
——— 20*l.* ——— 25*l.*	0	15	0	1	10	0
——— 25*l* ——— 50*l*	1	10	0	3	0	0
——— 50*l.* ——— 75*l.*	2	5	0	4	10	0
——— 75*l.* ——— 100*l.*	3	0	0	6	0	0
And where the same shall exceed 100*l.* then for every 50*l*, and also for any fractional part of 50*l*	1	10	0	3	0	0

And where any such lease or tack as aforesaid shall be granted in consideration of a fine, premium, or grassum, and also of a yearly rent, such lease or tack shall be chargeable also, in respect of such fine, premium, or grassum, with the *ad valorem*

(*a*) Whenever a fine is paid, and the lease is not stamped with this duty of £1 15*s*, the fine must be truly stated.

LEASE—*continued.* Duty. £ s. d.

stamp duties granted under the head or title of CONVEYANCE in the Schedule annexed to the Act passed in the thirteenth and fourteenth years of Her Majesty's reign, chapter ninety-seven [*as in this Table*].

Exemptions.

Any lease made in pursuance of the Trinity College, Dublin, Leasing and Perpetuity Act, 1851.

Any lease or tack for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

All which said leases or tacks shall be chargeable with the stamp duties, to which the same were subject and liable before the passing of the Act 16 *&* 17 *Vict. c.* 63 [*that is, with the duties now chargeable on a lease for a term not exceeding thirty five years as in this Table, but not with any greater* ad valorem *duty than* £1 15*s.*, *according to the saving and exception above*].

The last-mentioned duties on leases or tacks are imposed by the 17 & 18 Vict. c. 83. The following clauses and general regulations are contained in the 13 & 14 Vict. c. 97, and are applicable to all the foregoing leases and tacks.

LEASE or TACK of any *mine* or *minerals* or other property of a like nature, either with or without any other lands, tenements, hereditaments, or heritable subjects, *where any portion of the produce* of such mines or minerals *shall be reserved* to be paid in money or kind;

If it shall be stipulated that the value of such portion of the produce shall amount *at least to a given sum per annum*, or if such value shall be *limited not to exceed a given sum per annum*, to be specified in such lease or tack, then the said *ad valorem* duty on leases shall be charged in respect of the highest of such sums so given or limited for any year during the term of such lease or tack.

And where any *yearly sum* shall be reserved *in addition* to or together with such produce, relative to the yearly amount or value of which produce there shall be no such stipulation or limitation as aforesaid, the said *ad valorem* duty shall be charged in respect of such yearly sum.

And where *both a certain yearly sum* and *also such produce* relative to the yearly amount or value of which there shall be such stipulation or limitation as aforesaid shall be reserved, the said *ad valorem* duty shall be charged on the aggregate of such yearly sum, and also of the highest yearly amount or value of such produce.

GENERAL REGULATIONS as to Leases and Tacks:

Where, in any of the aforesaid several cases of lease or tack, *any fine*, premium, grassum, *or any rent*, payable under any lease or tack, *shall consist* wholly or in part *of corn, grain or victual*, the value of such corn, grain, or victual shall be ascertained or estimated at and after any permanent rate of conversion which the lessee may be especially charged with, or have it in his option to pay; and if no such permanent rate of conversion shall have been stipulated, then in England and Ireland respectively at and after the prices, upon an average of twelve calendar months preceding the first day of January next before the date of such lease or tack, of the average prices of British corn published in the London Gazette in the manner directed by any Act in

LEASE—*continued.*

Duty. £ s. d.

force for the commutation of tithes in England and Wales, and in Scotland at and after the fiars prices of the county in which the lands or any part thereof lie, upon an average of seven years preceding the date of such lease or tack; and such respective values shall be deemed and taken to be the fine, premium, or grassum, or yearly rent, or part thereof respectively, as the case may be, in respect whereof the *ad valorem* duty shall be charged as aforesaid.

And where *separate* and distinct *fines*, premiums or grassums shall be paid to *several lessors*, being joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, who shall by one and the same deed or instrument *jointly or severally demise* or lease the lands, tenements, hereditaments, or heritable subjects of which they are such joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, or where *separate and distinct rents* shall be by one and the same deed or instrument reserved or made payable, or agreed to be reserved or made payable, to the lessor or to several lessors, being such joint tenant, tenants in common, or coparceners, in England or Ireland, or proprietors *pro indiviso* in Scotland, the *ad valorem* duties shall be charged in respect of the *aggregate* amount of such fines, premiums, or grassums, and of such rents respectively.

And where any person, having contracted for, but not having obtained, a lease of any lands or other property, shall contract to sell such lands or other property, or any part thereof, or his right or interest therein or thereto, to any other person, and a lease shall accordingly be granted to such other person, the purchase-money or consideration which shall be paid or given or agreed to be paid or given to the person immediately selling to such lessee shall be set forth in such lease, and such lease shall be charged as well with the said *ad valorem* duty on such purchase-money or consideration as with the duty on the purchase-money or consideration or rent paid or reserved to the lessor

LEASE or TACK of any lands, tenements, hereditaments or heritable subjects *for any term or period less than a year*, at a rent reserved or payable for the same . . . . 17 & 18 Vict. c. 83, s. 23. — *The same* ad valorem *duty as on a lease or tack at a yearly rent of the same amount as the sum so reserved or payable.*

LEASE or TACK, of any kind, *not otherwise charged.* . . . — 1 15 0

Provided always, that no *ad valorem* duty shall be chargeable in respect of any *penal rent*, or increased rent in the nature of a penal rent, reserved in any such lease or tack as aforesaid.

LEASE (or bargain and sale) FOR A YEAR.—Duty repealed. See *ante*, p. 732, note.

LEASE.—Any ASSIGNMENT or SURRENDER of a lease or tack *upon any other occasion than a sale or mortgage* (*a*) . — *A duty equal to the* ad valorem *duty with which a similar lease or tack would be chargeable.*

Provided always, that where a similar lease or tack would be chargeable with any stamp duty amounting to 1*l.* 15*s.* or up-

(*a*) To ascertain the duty on a surrender, here mentioned, no regard is to be had to any renewal about to be made; the terms of the lease to be surrendered are alone to be referred to; the duty on the surrender being, precisely, such as would be chargeable on a lease if now to be granted on the same terms, whether such terms were fully and truly set forth in the existing lease or not

	Duty. £ s. d.
LEASE—*continued.*	
wards, then such assignment or surrender shall be chargeable only with a duty of	1 15 0
Provided also, that no stamp duty, except the said *ad valorem* duty shall be chargeable for or in respect of any lease, whether in possession, reversion, or remainder, expressed to be granted in consideration of the surrender of an existing lease and also of a sum of money.	
And in all the said several cases of LEASE or TACK, see PROGRESSIVE DUTY. See also DUPLICATE or COUNTERPART.	
The duties under the head LEASE (except where otherwise mentioned) are imposed by the 13 & 14 Vict. c. 97.	
Exemptions from the preceding and all other Stamp Duties.	
Leases or tacks of waste or uncultivated lands to any poor or labouring persons for any term not exceeding three lives or ninety-nine years, where the fine shall not exceed five shillings, nor the reserved rent one guinea per annum, *and the counterparts or duplicates of all such leases.*	
LEGACY.—See second part of the TABLE.	
LETTER or power of ATTORNEY, or other instrument, made for the sole purpose of appointing or nominating a *proxy* to vote at any one meeting (the time of holding whereof is specified in such instrument) of the proprietors or shareholders of or in any *joint-stock company* or other company or society, whose stocks or funds are divided into shares, and transferable, or at any adjournment of such meeting	0 2 6
7 Vict. c. 21.	
A penalty of 50*l.* is incurred by signing any such letter of attorney written on unstamped paper. *Ib.* s. 6.	
LETTER or power of ATTORNEY, to be used in the office of the Accountant General of the Court of Chancery for the receipt of any cheque, note or draft for any gross sum of money not exceeding 20*l.*; or any periodical payments not exceeding the annual sum of 5*l.*	0 5 0
16 & 17 Vict. c. 98, s. 5.	
LETTER or power of ATTORNEY made by any petty officer, seaman, marine or soldier serving as a marine, or by the executors or administrators of any such person, *for receiving prize money* .	0 1 0
——————and *for receiving wages* . . .	1 0 0
LETTER of ATTORNEY for the sale, transfer, acceptance, or receipt of dividends of any of the Goverment or Parliamentary stocks or funds	1 0 0
LETTER or power of ATTORNEY of any other kind, or commission or factory in the nature thereof . . .	1 10 0
And see PROGRESSIVE DUTY.	
Exemptions from the preceding and all other Stamp Duties.	
Letters of attorney for the receipt of dividends of any definite and certain share of the government or parliamentary stocks or funds producing a yearly dividend of less than 3*l.*	
Letters or powers of attorney, or proxies filed in any Ecclesiastical Court in Great Britain or Ireland. 5 *Geo. IV. c.* 41, *s.* 1.	
Letters or powers of attorney for voting on any election of a director or directors of the East India Company. 5 *&* 6 *Will. IV. c.* 64, *s.* 6.	

	Duty. £	s.	d.
LETTERS of administration. See second part of the TABLE.			
LETTER of licence from creditors to a debtor . . . . And see PROGRESSIVE DUTY.	1	15	0
LETTERS of marque and reprisal	5	0	0
LETTERS PATENT.—See GRANT—PATENT.			
LETTER of REVERSION in *Scotland*.—See MORTGAGE.			
LICENCE for marriage in *England* or *Ireland*, if special . .	5	0	0
LICENCE for marriage in *England*, if not special . .	0	10	0
Marriage licences in *Ireland*, not special, are exempted from stamp duty by the 5 & 6 Vict. c. 82, s. 4.			
LICENCE to be granted by any archbishop, bishop, vicar-general, or other competent authority in *England* or *Ireland* for the non-residence of any clergyman upon his living, pursuant (in *England*) to the 43rd Geo. III.	1	0	0
LICENCE to hold a *perpetual curacy* not proceeding upon a nomination 5 & 6 Vict. c. 79—England. 5 & 6 Vict. c. 82—Ireland.	3	10	0
LICENCE of any kind, *not otherwise charged*, which shall pass the seal of any archbishop, bishop, chancellor, or other ordinary, or of any Ecclesiastical Court in England or Ireland, or which shall be granted by any presbytery or other ecclesiastical power in Scotland .	2	0	0
Exemptions from the preceding and all other Stamp Duties.			
Licence to any spiritual person to perform divine service in any building approved by the bishop in lieu of any church or chapel, whilst the same is under repair, or is rebuilding, or in any building so approved, for the convenience of the inhabitants of a parish resident at a distance from the church or consecrated chapel. 16 & 17 Vict. c. 59, s. 9.			
Licences to stipendiary curates in England or Ireland, wherein the annual amount of the stipend shall be specified; and licences for the non-residence of clergymen upon their livings, where granted on the ground of there being no house or no fit house of residence thereon.			
LICENCE to use and exercise the calling or occupation of an APPRAISER in the United Kingdom . . . . To be taken out *yearly* by every person (except a licensed auctioneer) who shall exercise the said calling or occupation of an appraiser, or who for or in expectation of any gain, fee, or reward, shall make any appraisement or valuation chargeable by law with any Stamp Duty (8 & 9 Vict. c. 76).	2	0	0
LICENCE to be taken out *yearly* by any BANKER or bankers, or other person or persons who shall issue any promissory notes for money payable to the bearer on demand, and allowed to be reissued	30	0	0
LICENCE to be taken out *yearly* by every HAWKER, pedlar, petty chapman, and other trading person in *Great Britain*, going from town to town [place to place in *Scotland*], or to other men's houses, carrying to sell, or exposing to sale, any goods, wares, or merchandise	4	0	0
And further, for every beast bearing or drawing burden with which he shall travel . . . . . 50 Geo. III. c. 41—England. 55 Geo. III. c. 71—Scotland.	4	0	0
LICENCE to any person to exercise the trade or calling of a HAWKER, pedlar, or petty chapman, or other trading person going from place to place in *Ireland*, and travelling either on foot, or with a horse, or other beast of burden, or otherwise carrying to sell, or exposing			

	Duty. £	s.	d.
LICENCE—*continued.*			
to sale, any goods, wares, or merchandise; also licences to travelling tinkers, and casters of iron and metal, and to persons hawking about tea or coffee for sale	2	2	0
And further, for every servant, or other person employed in carrying goods of any such hawker, pedlar, or chapman; and for every horse or other beast bearing or drawing burden, which such person shall so travel with, or cause to be used for the purpose of carrying or drawing his, her, or their goods, wares, or merchandise	2	2	0
55 Geo. III. c. 19.			
LICENCE to be taken out yearly by the owner, proprietor, maker, and compounder of, and by every person uttering, vending, or exposing to sale, or keeping ready for sale, any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or compositions whatsoever used or applied, or to be used or applied, externally or internally, as MEDICINES or medicaments, for the prevention, cure, or relief of any disorder or complaint incident to, or in any way affecting the human body; or any packets, boxes, bottles, pots, phials, or other inclosures, with any contents subject to the duties on certain medicines;			
Within the cities of London or Westminster, or within the limits of the twopenny post; or within the city of Edinburgh .	2	0	0
In any other city or borough, or in any town corporate, or in the towns of Manchester, Birmingham, or Sheffield . .	0	10	0
In any other part of Great Britain . . .	0	5	0
44 Geo. III. c. 98—Great Britain, except Edinburgh.			
52 Geo. III. c. 150, s. 3—Edinburgh.			
LICENCE to be taken out yearly for using or exercising the trade or business of a PAWNBROKER within the cities of London and Westminster, or within the limits of the twopenny post .	15	0	0
And for using or exercising the trade or business of a pawnbroker elsewhere (17 & 18 Vict. c. 83—Ireland) . . .	7	10	0
LICENCE to be taken out yearly by persons dealing in PLATE, *viz.*—			
By every person trading in, vending, or selling any gold or silver plate, or any goods or wares in which any quantity of *gold, exceeding two pennyweights and under two ounces* in weight; or any quantity of *silver, exceeding five pennyweights, and under thirty ounces* in weight, in any one separate and distinct ware, or piece of goods, is or shall be manufactured . .	2	6	0
By every person trading in, vending or selling, any gold or silver plate, or any goods or wares in which any quantity of *gold* of the weight of *two ounces* or upwards; or any quantity of silver of the weight of *thirty ounces* or upwards, in any one separate or distinct piece of goods, is or shall be manufactured; and by every PAWNBROKER trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is or shall be manufactured, or taking in or delivering out pawns of such plate, goods, or wares; and by every REFINER of gold or silver	5	15	0
43 Geo. III. c. 69—Great Britain. 5 & 6 Vict. c. 82—Ireland.			

LICENCE to exercise the faculty of physic.—See ADMISSION.
LICENCE to act as a notary public.—See FACULTY.
LICENCE to demise copyhold lands.—See COPYHOLD.
LICENCE to make CARDS and DICE.—See CARDS and DICE.
LICENCE to use surname or arms.—See GRANT.

	Duty. £	s.	d.
LOTTERY OFFICERS.—See COMMISSION.			
LUNATIC, Custody of.—See GRANT.			
MARINE Insurance.—See POLICY.			
Royal MARINES, Appointment of Officer in.—See COMMISSION.			
MARRIAGE LICENCE.—See LICENCE.			
MASTER in CHANCERY.—See ADMISSION.			
MATRICULATION in the Universities.—See ADMISSION.			
MEDICINE.—See LICENCE.			
MEDICINES.—For and upon every packet, box, bottle, pot, phial, or other inclosure containing any drugs, herbs, pills, waters, essences, tinctures, powders, or other preparations or compositions whatsoever, used or applied, or to be used or applied, externally or internally, as medicines or medicaments, for the prevention, cure, or relief of any disorder or complaint incident to, or in any wise affecting the human body; which shall be uttered or vended in Great Britain; where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed the price or value of 1*s.*	0	0	1½
Where it shall exceed 1*s.* and not exceed 2*s.* 6*d.* .	0	0	3
——— 2*s.* 6*d.* ——— 4*s.* . .	0	0	6
——— 4*s.* ——— 10*s.* . .	0	1	0
——— 10*s.* ——— 20*s.* . .	0	2	0
——— 20*s.* ——— 30*s.* . .	0	3	0
——— 30*s.* ——— 50*s.* . .	0	10	0
——— 50*s.*	1	0	0
44 Geo. III. c. 98 / See also 52 Geo. III. c. 150 } Great Britain only.			
MEMORIAL, to be registered pursuant to any Act of Parliament made or to be made for the public registering of Deeds and Conveyances in England or Ireland; (that is to say,) for every piece of vellum, parchment, or paper upon which any such memorial shall be written 13 & 14 Vict. c. 97.	0	2	6
MEMORIAL to be registered or enrolled, pursuant to Act of Parliament, of any deed or instrument, deeds or instruments, whereby any annuity shall be granted or secured in England . .	1	0	0
And for every piece of vellum, parchment, or paper upon which any such memorial shall be written after the first, a further *progressive* duty of	1	0	0
MORTGAGE, conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion, of or affecting any lands, estate or property, real or personal, heritable or moveable, whatsoever;			
Also any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects, in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured.			
Also any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, which shall be intended only as a security, and shall be redeemable			

	Duty. £	s.	d.
MORTGAGE—*continued.*			
before the sale or other disposal thereof, either by express stipulation or otherwise; *except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number.*			
Also any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation, or tack of any lands, estate, or property whatsoever, which shall be apparently absolute, but intended only as a security;			
Also any agreement, contract, or bond, accompanied with a deposit of title deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid of any lands, estate, or property comprised in such title deeds, or for pledging or charging the same as a security;			
And also any deed whereby a real burden shall be declared or created on lands or heritable subjects in Scotland;			
Where the same respectively shall be made as a security for the payment of any definite and certain sum of money advanced or lent at the time or previously due and owing, or forborne to be paid, being payable,			
Not exceeding 50*l.*	0	1	3
Exceeding 50*l.* and not exceeding 100*l.* . .	0	2	6
Exceeding 100*l.* and not exceeding 150*l.* . .	0	3	9
Exceeding 150*l.* and not exceeding 200*l.* . .	0	5	0
Exceeding 200*l.* and not exceeding 250*l.* . .	0	6	3
Exceeding 250*l.* and not exceeding 300*l.* . .	0	7	6
And where the same shall exceed 300*l.*, then for every 100*l.*, and also for any fractional part of 100*l.* (*a*) . .	0	2	6

(*a*) TABLE of the *ad valorem* Duties on MORTGAGES prior to the 11 Oct. 1850.

	£			£	44 Geo. III. c. 98, commencing 11 Oct. 1804. £	s.	d.	48 Geo. III c. 149, commencing 11 Oct. 1808. £	s.	d.	55 Geo. III. c. 184, commencing 1 Sept. 1815. £	s.	d.
			not exceeding	50	1	10	0	0	15	0	1	0	0
Exceeding	50	and	"	100	1	10	0	1	0	0	1	10	0
"	100	"	"	150	2	0	0	1	10	0	2	0	0
"	150	"	"	200	2	0	0	2	0	0	2	0	0
"	200	"	"	300	2	0	0	2	0	0	3	0	0
"	300	"	"	500	3	0	0	3	0	0	4	0	0
"	500	"	"	1,000	4	0	0	4	0	0	5	0	0
"	1,000	"	"	2,000	5	0	0	5	0	0	6	0	0
"	2,000	"	"	3,000	6	0	0	6	0	0	7	0	0
"	3,000	"	"	4,000	7	0	0	7	0	0	8	0	0
"	4,000	"	"	5,000	8	0	0	8	0	0	9	0	0
"	5,000	"	"	10,000	10	0	0	10	0	0	12	0	0
"	10,000	"	"	15,000	12	0	0	12	0	0	15	0	0
"	15,000	"	"	20,000	15	0	0	15	0	0	20	0	0
"	20,000	...	...	...	20	0	0	20	0	0	25	0	0

With progressive duties of 20*s.* each for every entire quantity of fifteen folios after the first.

BONDS.—The same duties were, under the 48 Geo. III. c. 149, and 55 Geo. III. c. 184, payable on bonds for securing the payment of money.

Duty.
£ s. d.

MORTGAGE—*continued.*

And where the same respectively shall be made as a security for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, *other than and except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, or for the renewal of any grant or lease upon the dropping of any life or lives, pursuant to any agreement in any deed whereby any estate or interest held upon such life or lives shall be granted, assigned, or assured, or whereby any annuity shall be granted or secured for such life or lives;*

If the total amount of the money secured, or to be ultimately recoverable thereupon, *shall be limited* not to exceed a given sum . . . . — *The same duty as on a mortgage or wadset for such limited sum.*

And if the total amount of the money secured, or to be ultimately recoverable thereupon, *shall be uncertain and without any limit*, then the same shall be available as a security or charge for such an amount only of money or stock intended to be thereby secured as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.

And where the same respectively shall be made as a security for the transfer or re-transfer of any share in any of the Government or Parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of *any other* company or corporation, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable . . . — *The same duty as on a mortgage or wadset for a sum of money equal to the value of the stock or fund secured according to the average price thereof on the day of the date of the mortgage or other instrument aforesaid, or on either of the ten days preceding, or if there shall not have been any known sale on any of such days, then on the latest day preceding on which there shall have been a known sale.*

MORTGAGE.—And where any such deed or instrument as aforesaid shall be made respectively as a security for the payment of any *rent-charge* or *annuity*, or any sum or sums of money by way of repayment, or in satisfaction or discharge, or in redemption of any sum of money lent, advanced, or paid, as or for or in the nature of a loan intended to be repaid, satisfied, discharged, or redeemed, in manner aforesaid . . . — *The same duty as on a mortgage for the money so lent, advanced, or paid.*

And where the same respectively shall be made as a security for the payment of a sum of money, and also for the transfer or re-transfer of a share in any of the said stocks or funds, the said *ad valorem* duty shall be charged in respect of each.

And in case the same respectively shall be made as a security

Duty.
£ s. d.

MORTGAGE—*continued.*

for the payment or transfer to different persons of separate and distinct sums of money, or shares in any of the said stocks or funds, the said *ad valorem* duty shall be charged for and in respect of each separate and distinct sum of money or share, in any of the said stocks or funds therein specified and secured, and not upon the aggregate amount thereof.

These directions are contained in the 55 *Geo. III. c.* 184.

MORTGAGE.—Any TRANSFER or ASSIGNMENT, disposition, or assignation of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, or of the money or stock thereby secured;

Where NO FURTHER SUM of money or stock shall be added to the principal money or stock already secured,

If such principal money or stock already secured shall not exceed in amount or value in the whole the sum of 1400*l.* — *The same duty as on a mortgage or wadset for the total amount or value of such principal money or stock.*

And if such principal money or stock shall exceed in amount or value in the whole the sum of 1400*l.* . — 1 15 0

And where ANY FURTHER SUM of money or stock shall be added to the principal money or stock already secured . — *The same duty as on a mortgage or wadset for such further money or stock only.*

And in every other case not hereinbefore expressly provided for, such TRANSFER, assignment, disposition, or assignation, shall be chargeable with the duty of . . — 1 15 0

Provided always, that no such deed or instrument as aforesaid shall in any of the said several cases be chargeable with any further or other duty than is herein expressly provided (*except progressive duty*), by reason of its containing any further or additional security for the payment or transfer or re-transfer of such money or stock, or any interest or dividends thereon, or any new covenant, proviso, power, stipulation, or agreement, or other matter whatever in relation to such money or stock, or the interest or dividends thereon, or by reason of its containing all or any of such matters.

MORTGAGE.—Any deed or instrument made for the *further assurance* only of any estate or property which shall have been already mortgaged, pledged, or charged as a security, by any deed or instrument which shall have paid the *ad valorem* duty on mortgages or bonds chargeable under any Act or Acts in force at the time of making such last-mentioned deed or instrument.

Also any deed or instrument made as an *additional or further security* for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, which shall have been already secured by any deed or instrument which shall have paid the said *ad valorem* duty on mortgages or bonds chargeable as aforesaid, shall be chargeable respectively with the following duties; (that is to say),

	Duty. £ s. d.
MORTGAGE—*continued.*	
Where the total amount or value of the money or stock already secured, and in respect whereof the said *ad valorem* duty shall have been paid, shall not exceed the sum of 1400*l.* .	*The same duty as on a mortgage or wadset for the amount or value of the said money or stock.*
And in any other case	1 15 0

Provided always, that if any further sum of money or stock shall be added to the principal money or stock already secured, such deed or instrument for further assurance, or additional or further security, either by the mortgagor, or by any person entitled to the property mortgaged, by descent, devise, or bequest from such mortgagor, shall be chargeable only (*exclusive of progressive duty*) with the *ad valorem* duty on mortgages in respect of such further sum of money or stock in lieu of the duty aforesaid, notwithstanding that the same deed or instrument may also contain any covenant, either by the mortgagor or by any person entitled as aforesaid, proviso, power, stipulation, or agreement, or other matter whatever in relation to the money or stock already secured, or the interest or dividends thereon.

MORTGAGE.—Any RECONVEYANCE, release, surrender, discharge, or renunciation of any mortgage or wadset, or of any other such security as aforesaid, or the benefit thereof, or of the money or stock thereby secured;	
Where the total amount of the principal money or stock at any time secured shall not exceed the sum of 1400*l.* . .	*The same duty as on a mortgage or wadset for the amount or value of the said money or stock.*
And in any other case	1 15 0

The foregoing Duties under the head of Mortgage are imposed by the 13 *&* 14 *Vict. c.* 97. *The following directions are contained in the* 55 *Geo. III. c.* 184.

Provided always, that where several distinct deeds or instruments, falling within the description of any of the instruments charged with the said *ad valorem* duty on mortgages and wadsets shall be made at the same time for securing the payment or transfer of one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned, the said *ad valorem* duty, if exceeding 2*l.*, shall be charged only on one of such deeds or instruments, and all the rest shall be charged with the duty to which the same may be liable under any more general description of such deeds or instruments contained in this TABLE; and if required for the sake of evidence, all the rest of such deeds or instruments shall be also stamped with some particular stamp, for denoting or testifying the payment of the said *ad valorem* duty, on all the said deeds or instruments being produced duly stamped with the duties charged thereon.

And where any copyhold or customary lands or hereditaments shall be mortgaged by means of a conditional surrender or grant, the said *ad valorem* duty shall be charged on the surrender or grant, or the memorandum thereof, if made out of Court, or on the copy of Court roll of the surrender or grant, if made in Court. Copies of Court roll made after the 31st day

Duty.
£ s. d.

MORTGAGE—*continued.*

of August, 1815, of surrenders and grants made in Court before or upon that day, and subsequent to the 10th day of October, 1808, are charged with the said *ad valorem* duties; but Copies of Court roll of surrenders and grants made before or upon the 10th day of October, 1808, are not liable thereto.

And where any copyhold or customary lands or hereditaments shall be mortgaged or charged together with other property for securing one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned, the said *ad valorem* duty shall be charged on the deed or instrument relating to the other property.

NOTE.—Where there were duplicates of any deed or instrument chargeable with the *ad valorem* duty on mortgages and wadsets exceeding 2*l.*, made prior to the 11th of October, 1850, one of them only was charged therewith, and the others were charged with the duty to which they were liable under any more general description in the schedule to the 55 Geo. III. c. 184; and on the whole being produced duly stamped, as by law required, the latter were also to be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty.

For the present duty on DUPLICATES *as charged by the* 13 *&* 14 *Vict. c.* 97, *see* DUPLICATE *or* COUNTERPART.

Exemptions from the said ad valorem *duty on Mortgages, &c., but not from any other Duty to which the same may be liable.*

Any deed or other instrument made in pursuance of and conformably to any agreement, contract, or bond, charged with and which shall actually have paid the said ad valorem *duty, or the* ad valorem *duty on mortgages granted by the* 48 *Geo. III. c.* 149, *or the* 55 *Geo. III. c.* 184, *in Great Britain, or the* 55 *Geo. III. c.* 78, *or the* 56 *Geo. III. c.* 56, *in Ireland.*

The following exemptions contained in the 55 Geo. III. c. 184, relate to deeds made prior to the 11th October, 1850; such deeds made subsequently, are specifically charged by the 13 & 14 Vict. c. 97, as in this TABLE.

Any deed or other instrument made for the further assurance only of any estate or property already mortgaged, pledged, or charged as a security, by any deed or instrument which shall have paid the ad valorem *duty on mortgages.*

Any deed or instrument made as an additional or further security for any sum or sums of money, or any share or shares of any of the stocks or funds mentioned in the 55 *Geo. III. c.* 184, *or* 56 *Geo. III. c.* 56, *already secured by any deed or instrument which shall have paid the* ad valorem *duty on mortgages; or* [3 *Geo. IV. c.* 117, *s.* 3], *already secured by any bond on which the* ad valorem *duty on bonds shall have been paid, to be exempt from the* ad valorem *duty on mortgages, so far as regards such sum or sums of money, or such share or shares of any of the said stocks or funds before secured, in case such additional or further security shall be made by the same person or persons who made the original security;* but if any further sum of money or stock shall be added to the principal money or stock already secured, or shall be thereby secured to any other person, the said *ad valorem* duty shall be charged in respect of such further sum of money or stock.

Duty
£ s. d.

MORTGAGE—*continued.*

And if necessary, for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duty shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty upon all the deeds and instruments relating to the particular transaction being produced, and appearing to be duly stamped with the duties to which they were liable.

For General Exemptions from the preceding and all other Stamp Duties, see the end of this part of the TABLE.

MORTGAGE, wadset, &c., *with the conveyance of the equity or right of redemption,* or reversion, or other matter *in the same deed ;* viz. :

Where any deed or writing shall operate as a mortgage or other instrument charged with the *ad valorem* duty on mortgages, and also as a conveyance of the equity or right of redemption or reversion of any lands, estate or property therein comprised, to or in trust for or according to the direction of a purchaser, such deed or writing shall be charged not only with the said *ad valorem* duty on mortgages, but also with the *ad valorem* duty charged on a conveyance upon the sale of any property; but where the equity or right of redemption or reversion shall be thereby conveyed or limited in any other manner, such deed or writing shall be charged only as a mortgage.

And in all other cases where a mortgage or other instrument charged with the *ad valorem* duty on mortgages shall be contained in one and the same deed or writing with any other matter or thing (*except what shall be incident to such mortgage or other instrument*), such deed or writing shall be charged with the same duties (*except the progressive duty*) as such mortgage or other instrument, and such other matter or thing, would have been separately charged with, if contained in separate deeds or writings.

And in all the said several cases of deeds and instruments chargeable under the head of MORTGAGE, see PROGRESSIVE DUTY.

MUTUAL DISPOSITION or conveyance in Scotland.—See EXCHANGE and PARTITION.

NAVY—Appointment of officer in.—See COMMISSION.

NEWSPAPERS throughout the United Kingdom, *viz.* :

For every sheet or other piece of paper whereon any newspaper shall be printed 0 0 1

And where such sheet or piece of paper shall contain on one side thereof a superficies, exclusive of the margin of the letter-press, exceeding 2295 inches, the additional duty of . 0 0 1

A supplement published with any newspaper duly stamped with the duty of one penny, such supplement being printed on one sheet of paper only, and together with such newspaper containing in the aggregate a superficies not exceeding 2295 inches, to be free of duty.

	Duty. £ s. d.
NEWSPAPERS—*continued.*	
Any other supplement to such duly stamped newspaper is not to be charged with any higher stamp duty than one halfpenny, provided it does not contain a superficies exceeding 1148 inches.	
And any two supplements to any such duly stamped newspaper are not to be chargeable with any higher stamp duty than one halfpenny on each, provided each of such supplements be printed on one sheet of paper only, and that they contain, together, a superficies not exceeding in the aggregate 2295 inches.	
And the following shall be deemed and taken to be newspapers chargeable with the said duties; viz.:	
Any paper containing *public news, intelligence, or occurrences* printed in any part of the United Kingdom to be dispersed and made public, published periodically, or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such parts or numbers.	
Also any paper printed in any part of the United Kingdom weekly or oftener, or at intervals not exceeding twenty-six days, containing *only* or *principally advertisements.*	
Exemptions.	
Any paper called "Police Gazette, or Hue and Cry," published in Great Britain by authority of the Secretary of State, or in Ireland by authority of the Lord Lieutenant.	
Daily accounts or bills of goods imported and exported, or warrants or certificates for the delivery of goods, and the weekly bills of mortality, and also papers containing any lists of prices current, or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels, or any other matter wholly of a commercial nature; provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein.	
6 & 7 Will. IV. c. 76, and 16 & 17 Vict. cc. 63 and 71.	
NOMINATION by her Majesty, her heirs or successors, or by any other patron, to any perpetual curacy in England . .	1 10 0
NOTARIAL ACT—Any whatsoever *not otherwise charged in this* TABLE	0 5 0
And for every sheet or piece of paper, parchment, or vellum upon which the same shall be written, after the first, a further *progressive* duty of	0 5 0
NOTARY.—See CERTIFICATE—DISPENSATION—FACULTY.	
NOTE.—See PROMISSORY NOTE.	
OFFICE, appointment to.—See COMMISSION—GRANT.	
ORDER, or warrant beneficial.—See WARRANT.	
ORDER for the payment of money.—See BILL OF EXCHANGE.	

	Duty. £ s. d.
PARTITION.—Any deed whereby any lands or other hereditaments or heritable subjects in England, Scotland, or Ireland shall be conveyed, or any copyhold or customary lands or hereditaments in England shall be covenanted to be surrendered, in order to effect a *partition* or *division* thereof among coparceners, joint tenants, or tenants in common, heirs portioners, conjux fiars, or joint proprietors of any sort;	
If no sum of money, or only a sum under 300*l.*, shall be paid or agreed to be paid for equality of partition or division, the ordinary duty of	1 15 0
And if any sum or sums of money amounting to 300*l.* or upwards shall be paid or agreed to be paid for equality	*The same* ad valorem *duty as for a conveyance on the sale of lands for a sum of money equal to the amount of the sum or sums so paid or agreed to be paid.*
And see PROGRESSIVE DUTY. See also DUPLICATE or COUNTERPART.	
NOTE.—*A Duplicate of a Deed of Partition was, before the* 12 *&* 13 *Vict. c.* 97, *charged with the same duty as the original.*	
And in case there shall be more than one deed for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of PARTITION, and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this TABLE.	
PASSPORT	0 5 0
PATENT.—Letters patent for inventions, *viz.:*	
Petition for grant of letters patent . . .	5 0 0
Certificate of record of notice to proceed . . .	5 0 0
Warrant of law officer for letters patent . . .	5 0 0
Sealing of letters patent	5 0 0
Specification	5 0 0
Letters patent or duplicate thereof before the expiration of the third year	50 0 0
The like before the expiration of the seventh year . .	100 0 0
Certificate of record of notice of objections . . .	2 0 0
Certificate of every search and inspection . . .	0 1 0
Certificate of entry of assignment or licence . . .	0 5 0
Certificate of assignment of licence . . .	0 5 0
Application for disclaimer	5 0 0
Caveat against disclaimer	2 0 0
Office copy of documents, for every 90 words . . .	0 0 2
16 Vict. c. 5.	
PAWNBROKER'S Licence.—See LICENCE.	
PERPETUAL CURACY.—See LICENCE—NOMINATION.	
PHYSICIAN.—See ADMISSION.	
PLATE DEALER'S Licence.—See LICENCE.	
PLATE of gold made or wrought in Great Britain, or Ireland, and which shall or ought to be touched, assayed, or marked in Great Britain, or Ireland, for every ounce thereof, and so in proportion for any greater or less quantity	0 17 0
Exemption.—Gold Watch Cases.	

	Duty. £	s.	d.
PLATE of silver made or wrought in Great Britain, or Ireland, and which shall or ought to be touched, assayed, or marked in Great Britain, or Ireland, for every ounce thereof, and so in proportion for any greater or less quantity	0	1	6
Exemptions.—All watch cases, chains, necklace beads, lockets, filigree work, shirt buckles or brooches, stamped medals, and spouts to china, stone, or earthenware tea-pots, of silver, of any weight whatsoever.			
Tippings, swages, or mounts, not weighing ten pennyweights of silver each, and not being necks or collars for castors, cruets, or glasses appertaining to any sorts of stands or frames: wares of silver not weighing five pennyweights of silver each. But this exemption not to include necks, collars, and tops, for castors, cruets, or glasses, appertaining to any sort of stands or frames; buttons to be affixed to or set on any wearing apparel, solid silver buttons, and solid studs, not having a bezelled edge soldered on, wrought seals, blank seals, bottle tickets, shoe clasps, patch boxes, salt spoons, salt ladles, tea spoons, tea strainers, caddy ladles, buckles, and pieces of garnish, cabinets, or knife cases, or tea chests, or bridles, or stands, or frames.			
55 Geo. III. c. 185, Great Britain. 5 & 6 Vict. c. 82, Ireland.			
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made *upon any life* or lives, or upon any event or contingency relating to or depending upon any life or lives,			
Where the sum insured shall not exceed 500*l*			
Then for every 50*l.* and any fractional part of 50*l.* . .	0	0	6
And where it shall exceed 500*l.* and shall not exceed 1000*l.*			
Then for every 100*l.* and any fractional part of 100*l.* .	0	1	0
And where it shall exceed 1000*l.*			
Then for every 1000*l.* and any fractional part of 1000*l.* .	0	10	0
16 & 17 Vict. c. 59.			
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made of or upon any building, goods, wares, merchandise, or other property, from loss or damage *by fire only*, by any public company or other person or persons duly licensed, or who ought to be licensed, pursuant to the 22 Geo. III. c. 48, or by the Royal Exchange or London Assurance Corporation	0	1	0
And for and in respect of every insurance from loss or damage by fire only, which shall be made or renewed or continued by any public company or other person or persons licensed, or who ought to be licensed as above mentioned, in Great Britain, or whether licensed or not in Ireland, or by the Royal Exchange or London Assurance Corporation, a duty of 3*s.* for every 100*l.* insured for a year, and at and after that rate for any fractional part of 100*l.* insured, and for any fractional part of a year, as well as for any number of years, for which the insurance shall be made or renewed or continued, but no fraction of a penny shall be charged . . .	*per centum per annum* 0	3	0
Exemptions.—Insurances on public hospitals, and on property in any foreign kingdom or state in amity with Her Majesty, her heirs or successors.			

	Duty. £	s.	d.
POLICY—*continued.*			
Insurances on any agricultural produce, farming stock (live or dead), or implements or utensils of husbandry, being upon any farm or farms in Great Britain or Ireland, provided such insurances shall be effected by separate and distinct policies relating solely to such agricultural produce, farming stock, implements or utensils. 3 & 4 *Will. IV. c.* 23, *s.* 5.			
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made, pursuant to the Act of the 50 Geo. III. c. 35, by any person or persons, not being licensed pursuant to the said Act of the 22 Geo. III., of or *upon any building, goods,* wares, merchandise, or other property situated and being *in any of the islands,* settlements, or territories belonging to or under the *dominion of Her Majesty,* her heirs or successors, *in the West Indies, or elsewhere beyond the seas,* from loss or damage by fire, for any period of time not exceeding twelve calendar months	0	2	6
And also the further or additional duty following, *viz.*—			
If the whole sum insured shall not exceed 100*l.* . .	0	5	0
And if the whole sum insured shall exceed 100*l.* then for every 100*l.* and also for any fractional part of 100*l.* whereof the same shall consist	0	5	0
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made upon any *ship or vessel,* or upon *any goods,* merchandise, or other property *on board of any ship or vessel,* or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured *for or upon any voyage whatever,* the following duties, where the whole sum insured shall not exceed 100*l.* and where the whole sum insured shall exceed 100*l.*, then for every 100*l.*, and also for any fractional part of 100*l.*, whereof the same shall consist; (that is to say,)			
Where the premium or consideration for such insurance actually and *bonâ fide* paid, given, or contracted for shall not exceed the rate of 10*s. per cent.* on the sum insured . .	0	0	3
And where the same shall exceed the rate of 10*s. per cent.*, and shall not exceed the rate of 20*s. per cent.* on the sum insured .	0	0	6
And where the same shall exceed the rate of 20*s. per cent.*, and shall not exceed the rate of 30*s. per cent.* on the sum insured .	0	1	0
And where the same shall exceed the rate of 30*s. per cent.*, and shall not exceed the rate of 40*s. per cent.* on the sum insured .	0	2	0
And where the same shall exceed the rate of 40*s. per cent.*, and shall not exceed the rate of 50*s. per cent.* on the sum insured .	0	3	0
And where the same shall exceed the rate of 50*s. per cent.* on the sum insured	0	4	0
But if the separate interests of two or more distinct persons shall be insured by one policy or instrument, then the said respective duties, as the case may require, shall be charged thereon in respect of each and every fractional part of 100*l.*, as well as in respect of every full sum of 100*l.*, which shall be thereby insured upon any separate and distinct interest.			
POLICY of assurance or insurance, or other instrument, whereby any such insurance as aforesaid shall be made *for any certain term or*			

	Duty. £	s.	d.
POLICY—*continued.*			
period of time, the following rates or sums for every 100*l.*, and also for any fractional part of 100*l.*, whereof the same shall consist; (that is to say,)			
Where any such insurance shall be made for any term or period not exceeding six calendar months . . .	0	2	6
Exceeding six calendar months . . .	0	4	0
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance, commonly called a *mutual insurance,* shall be made, or whereby divers persons shall insure or agree to insure one another, without any premium or pecuniary consideration, from any loss, damage, or misfortune that may happen of or to any ship or vessel, or any goods, merchandise, or other property on board of any ship or vessel, or the freight of any ship or vessel, or any other interest in or relating to any ship or vessel which may lawfully be insured *upon any voyage whatever, and not for any period of time;*			
For every sum of 100*l.*, and also for each and every fractional part of 100*l.*, thereby insured to any person or persons .	0	2	6
The duties on sea insurances are granted by the 7 Vict. c. 21, throughout the United Kingdom.			
POLICY of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any *other lawful insurance whatsoever, not before charged,* shall be made upon any property or interest whatever, from loss or damage of any kind;			
Where the premium or consideration for such insurance actually and *bonâ fide* paid, given, or contracted for shall not exceed the rate of 20*s. per cent.* on the sum insured;			
If the whole sum insured shall not exceed 100*l.* .	0	2	6
And if the whole sum insured shall exceed 100*l.*, then for every 100*l.*, and also for any fractional part of 100*l.* whereof the same shall consist . . .	0	2	6
And where the premium or consideration for such insurance, actually and *bonâ fide* paid, given, or contracted for shall exceed the rate of 20*s. per cent.* on the sum insured, and also where the insurance shall be made for any other than a pecuniary consideration;			
If the whole sum insured shall not exceed 100*l.* .	0	5	0
And if the whole sum insured shall exceed 100*l.*, then for every 100*l.*, and also for any fractional part of 100*l.* whereof the same shall consist . . .	0	5	0
But if the *separate interests* of two or more distinct persons shall be insured by one policy or instrument, then the said duty of 2*s.* 6*d.* or 5*s.*, as the case may require, shall be charged thereon in respect of each and every fractional part of 100*l.*, as well as in respect of every full sum of 100*l.*, which shall be thereby insured upon any *separate and distinct interest.*			

NOTE.—*No* progressive *duty is chargeable on a policy of insurance.*

POSTAGE.—The rates of postage, although, when denoted by stamps, they are declared to be Stamp Duties, properly belong to the Post-office Revenue; they are therefore omitted in this TABLE.
3 & 4 Vict. c. 96.

	Duty. £ s. d.
POWER of ATTORNEY.—See LETTER OF ATTORNEY.	
PRECEDENCE, warrant or grant of.—See GRANT.	
PRECEPT of *clare constat*, to give seisin of lands or other heritable subjects in Scotland	0 5 0
And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further *progressive* duty of	0 5 0
13 & 14 Vict. c. 97.	
PRESENTATION.—See DONATION.	
PROBATE and LETTERS of ADMINISTRATION.—See second part of the TABLE.	
PROCTOR—PROCURATOR.—See ADMISSION—CERTIFICATE.	
PROCURATION, deed or other instrument of . . And see PROGRESSIVE DUTY.	1 10 0
PROGRESSIVE DUTY (that is to say),—Where any deed or instrument of any description whatever chargeable with any stamp duty together with any schedule, receipt, or other matter put or endorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, there shall be charged the further *progressive* duty following; (that is to say,)	
Where such deed or instrument shall be chargeable with any *ad valorem* stamp duty or duties not exceeding in the whole the sum of ten shillings, a further *progressive* duty equal to the amount of such *ad valorem* duty or duties.	
And in every other case (*except where any other progressive duty is expressly charged thereon*), a further *progressive* duty of .	0 10 0
Provided always, that nothing herein contained shall extend to charge the said *progressive* duty in any case in which express provision is made by any Act or Acts for charging a certain duty on every skin, sheet, or piece of vellum, parchment, or paper in or upon which any deed or instrument shall be contained or written, or to charge with *progressive* duty any	

The PROGRESSIVE Duties payable on the undermentioned instruments, prior to the 11th October 1850, calculated in the same manner as under the present Act, were as follows, viz.:—

	£ s. d
CONVEYANCE on Sale and MORTGAGE charged with *ad valorem* Duty, instruments relating to COPYHOLD Conveyances, LEASE, in all cases, LETTER of ATTORNEY, instrument of PROCURATION, and SPECIFICATION for a patent	1 0 0
AGREEMENT, AWARD, BARGAIN and SALE of any kind (*Lease for a year or otherwise*), BOND, SETTLEMENT, and all Deeds and Instruments of Conveyance not before specified	1 5 0

description of deed or instrument not chargeable with *progressive* duty under any Act or Acts in force, or to charge any deed or instrument with any higher rate or amount of *progressive* duty than is now chargeable on a deed or instrument of the like description under any such Act or Acts.

Progressive duties are imposed by the 13 & 14 Vict. c. 97.

	Duty. £	s.	d.
PROMISSORY NOTE for the payment to the *bearer on demand* of any sum of money			
Not exceeding one pound and one shilling	0	0	5
Exceeding 1*l.* 1*s.* and not exceeding 2*l.* 2*s.*	0	0	10
——— 2*l.* 2*s.* ——— 5*l.* 5*s.*	0	1	3
——— 5*l.* 5*s.* ——— 10*l.*	0	1	9
——— 10*l.* ——— 20*l.*	0	2	0
——— 20*l.* ——— 30*l.*	0	3	0
——— 30*l.* ——— 50*l.*	0	5	0
——— 50*l.* ——— 100*l.*	0	8	6

Which said notes may be re-issued, after payment thereof, as often as shall be thought fit.

These notes can be lawfully issued by licensed bankers only.

The issuing of any for sums less than 5*l.* is prohibited by 7 Geo. IV. c. 6.—See also COMPOSITION.

The foregoing duties are contained in the schedule to the 55 Geo. III. c. 184; the following are imposed by the 17 & 18 Vict. c. 83.

PROMISSORY NOTE for the payment *in any other manner than to the bearer on demand* of any sum of money			
Not exceeding 5*l.*	0	0	1
Exceeding 5*l.* and not exceeding 10*l.*	0	0	2
——— 10*l.* ——— 25*l.*	0	0	3
——— 25*l.* ——— 50*l.*	0	0	6
——— 50*l.* ——— 75*l.*	0	0	9
——— 75*l.* ——— 100*l.*	0	1	0

These notes cannot lawfully be re-issued after being once paid.

PROMISSORY NOTE for the payment, *either to the bearer on demand or in any other manner than to the bearer on demand,* of any sum of money			
Exceeding 100*l.* and not exceeding 200*l.*	0	2	0
——— 200*l.* ——— 300*l.*	0	3	0
——— 300*l.* ——— 400*l.*	0	4	0
——— 400*l.* ——— 500*l.*	0	5	0
——— 500*l.* ——— 750*l.*	0	7	6
——— 750*l.* ——— 1,000*l.*	0	10	0
——— 1,000*l.* ——— 1,500*l.*	0	15	0
——— 1,500*l.* ——— 2000*l.*	1	0	0
——— 2,000*l.* ——— 3,000*l.*	1	10	0
——— 3,000*l.* ——— 4,000*l.*	2	0	0
——— 4,000*l.* and upwards	2	5	0

These notes cannot lawfully be re-issued after being once paid.

Duty.
£ s. d.

And the following instruments are to be deemed and taken to be promissory notes, within the intent and meaning of this TABLE.

All notes promising the payment of any sum or sums of money *out of any particular fund* which may or may not be available, or upon any *condition or contingency* which may or may not be performed or happen, if the same shall be *made payable to the bearer or to order*, and if the same shall be *definite and certain, and not amount* in the whole *to* 20*l.*

And all receipts for money deposited in the Bank, or in the hands of any banker or bankers, which shall contain any agreement or memorandum importing that interest shall be paid for the money so deposited. (*But see exemption as to this latter charge under the head* RECEIPT.)

Exemptions from the Duties on Promissory Notes.

All notes promising the payment of any sum or sums of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, where the same shall not be made payable to the bearer or to order, and also where the same shall be made payable to the bearer or to order, if the same shall amount to 20*l. or be indefinite.*

And all other instruments bearing in any degree the form or style of promissory notes, but which in law shall be deemed special agreements, except those hereby expressly directed to be deemed promissory notes.

But such of the notes and instruments here exempted from the duty on promissory notes shall nevertheless be liable to the duty which may attach thereon as agreements or otherwise.*

Exemptions from the preceding and all other Stamp Duties.

All promissory notes for the payment of money issued by the Governor and Company of the Bank of England.

The foregoing clauses and exemptions are contained in the Schedule to the 55 Geo. III. c. 184.

	£	s.	d.
PROTEST of any bill of exchange or promissory note for any sum of money,			
Not amounting to 20*l.*	0	2	0
Amounting to 20*l.* and not amounting to 100*l.* . .	0	3	0
——— 100*l.* ——— 500*l.* . .	0	5	0
——— 500*l.* or upwards	0	10	0
PROTEST of any other kind	0	5	0
And for every sheet or piece of paper, parchment, or vellum upon which the same shall be written, after the first a further *progressive* duty of	0	5	0

PROXY.—See LETTER OF ATTORNEY.

PURCHASE DEED.—See CONVEYANCE on the Sale of Lands, &c.

REAL BURDEN on lands in Scotland, deed creating.—See MORTGAGE—DISPOSITION.

	Duty £. s. d.
RECEIPT or Discharge, given for or upon the payment of money, Amounting to 2*l.* or upwards	0 0 1
And any note, memorandum, or writing whatsoever, given to any person for or upon the payment of money, whereby any sum of money, debt, or demand, or any part of any debt or demand *therein specified*, and amounting to two pounds or upwards, shall be expressed or acknowledged to have been *paid, settled, balanced, or otherwise discharged or satisfied*, or which shall import or signify any such acknowledgment, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be *a receipt for a sum of money*, and shall be charged with a duty accordingly.	
And all receipts, discharges, and acknowledgments of the description aforesaid, which shall be given for or upon payments made by or with any bills of exchange, drafts, promissory notes, or other securities for money, shall be deemed and taken to be receipts given upon the payment of money within the intent and meaning of this TABLE.	
Exemptions from the preceding Duties on Receipts.	
Receipts given for money deposited in any bank, or in the hands of any banker to be accounted for, whether with interest or not, provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for: Provided always, that this exemption shall not extend to receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares or in respect of calls upon any scrip or shares of or in any joint stock or other company, or proposed or intended company, which said last-mentioned receipts or acknowledgments, by whomsoever given, shall be liable to the duty charged upon receipts. 16 & 17 *Vict. c.* 59.	*Deposits with bankers*
Receipts exempted from Stamp Duty by any Act or Acts relating to the assessed taxes.	*Taxes.*
Receipts given for money received for or on account of Land Tax, or the duties of Assessed Taxes, or the duties on profits arising from property, professions, trades, and offices, by any collector or receiver of such taxes or duties, or by any person having authority to collect or receive the same 16 & 17 *Vict. c.* 63.	
Receipts given for or upon the payment of money to or for the use of Her Majesty, her heirs, or successors.	*All payments to the Crown*
Receipts or discharges given by the treasurer of the navy for any money imprested to or received by him for the service of the navy.	*Navy imprests.*
Receipts or discharges given by any agent for money imprested to him on account of the pay of the army or ordnance.	*Army imprests.*
Receipts or discharges given by any officer, seaman, marine, or soldier, or their representatives respectively, for or on account of any wages, pay, or pension due from the Navy Office, Army Pay Office, or Ordnance Office.	*Pay &c.*
Receipts or discharges given for the consideration money for the	*Public funds.*

	Duty. £ s. d.
RECEIPT—*continued.*	
purchase of any share in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company or South Sea Company, and for any dividend paid on any share of the said stocks or funds respectively.	
Receipts or discharges given for any principal money or interest due on Exchequer bills. *	*Exchequer bills.*
Receipts or discharges written upon promissory notes, bills of exchange, drafts, or orders for the payment of money, duly stamped according to the laws in force at the date thereof, or upon bills of exchange drawn out of but payable in Great Britain, or Ireland, respectively.	*Notes and bills.*
Receipts or discharges given upon bills or notes of the Governor and Company of the Bank of England, or the Bank of Ireland.	
Receipts or discharges indorsed or otherwise written upon or contained in any bond, mortgage, or other security, or any conveyance, deed or instrument whatever, duly stamped according to the laws in force at the date thereof, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured.	*Deeds.*
Releases or discharges for money by deeds duly stamped according to the laws in force at the date thereof.	
Receipts or discharges given for drawbacks or bounties upon the exportation of any goods or merchandise from Great Britain or Ireland.	*Drawback*
Receipts or discharges for the return of any duties of Customs upon certificates of over entry.	*Returns for over entry.*
Receipts or acknowledgments of payment indorsed upon any bills, orders, remittance bills, or remittance certificates, drawn by commissioned officers, masters, and surgeons in the navy, or by any commissioner or commissioners in the navy, under the authority of the 35 Geo. III., for the more expeditious payment of the wages and pay of certain officers belonging to the navy.	*Navy pay bills.*
Receipts or acknowledgments of payment indorsed upon any bills drawn pursuant to any former Act or Acts of Parliament by the commissioners of the navy, or by the commissioners for victualling the navy, or by the commissioners for managing the transport service, and taking care of sick and wounded seamen, upon and payable by the treasurer of the navy.	
Receipts given solely for the duty on insurances against fire; and receipts given for the premium and duty on such insurances to be liable only to the receipt duty in respect of the premium.	*Fire insurance.*
See also the General Exemptions at the end of this part of the TABLE.	

RECEIVER General of Taxes.—See COMMISSION.

RECOGNIZANCE, statute merchant, and statute staple, entered into

	Duty. £ s. d.
RECOGNIZANCE—*continued.* as a security for the payment of any sum or sums of money, annuity or annuities, or for the transfer of any share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or the Bank of Ireland, or of the East India Company, or of the South Sea Company;	
Where such payment or transfer shall not be already secured by a bond or mortgage, or by some other instrument hereby charged with the same duty as a bond or mortgage	*The same duty or duties as on a bond given for the like purpose in England.*
And where such payment or transfer shall be already secured as above mentioned	1 0 0
RECOGNIZANCE, statute merchant, and statute staple, entered into as a security for the performance of any covenant, contract, or agreement, or for the due execution of any office or trust, or for rendering a due account of money received or to be received, or for indemnifying any person or persons against any matter or thing	1 15 0
And see PROGRESSIVE DUTY. See also *Bail* BOND.	
RECONVEYANCE.—See ANNUITY—MORTGAGE.	
REFINER of gold or silver.—See LICENCE.	
REGISTER of annuity or deeds.—See MEMORIAL.	
REGISTER or entry of the degree of a barrister at law.—See ADMISSION.	
REGISTER or entry of degrees taken in any University.—See ADMISSION.	
RELEASE upon the sale of any property.—See CONVEYANCE.	
RELEASE or reconveyance of any annuity or rent-charge made redeemable.—See ANNUITY.	
RELEASE and renunciation of lands or other property, real or personal, heritable or moveable, or of any right or interest therein; any deed or instrument of, *not otherwise charged, nor expressly exempted from all Stamp Duty*	1 15 0
And see PROGRESSIVE DUTY.	
RENT-CHARGE, conveyance in consideration of.—See CONVEYANCE.	
RENUNCIATION upon the sale of any property.—See CONVEYANCE.	
RENUNCIATION of any right or interest in any property, otherwise than upon a sale.—See RELEASE.—See also MORTGAGE.	
RESIGNATION; principal or original instrument of resignation, or service of cognition of heirs, or charter or seisin of any houses, lands, or other heritable subjects, in Scotland, holding burgage, or of burgage tenure	0 5 0
Also Instrument of resignation of any lands or other heritable subjects in Scotland, not of burgage tenure	0 5 0

	Duty. £ s. d.
RESIGNATION—*continued.* And where any of the said instruments shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further *progressive* duty of . . . . . 13 & 14 Vict. c. 97.	0 5 0
RESTITUTION of temporalities.—See GRANT.	
REVOCATION of any use or trust, uses or trusts, of or concerning any estate or property, real or personal, where made by any writing, not being a deed or will . . . . . And see PROGRESSIVE DUTY. *If made by deed*—see DEED.	1 15 0
SALE—Conveyance upon sale.—See CONVEYANCE.	
SCHEDULE, inventory, or catalogue of any lands, hereditaments, or heritable subjects, or of any furniture, fixtures, or other goods or effects; or containing the terms and conditions of any proposed sale, lease, or tack, or the conditions and regulations for the cultivation or management of any farm, lands, or other property leased or agreed to be leased; or containing any other matter or matters of contract or stipulation whatsoever; *which shall be referred to* in or by, and be intended to be used or given in evidence as part of, or as material to, any agreement, lease, tack, bond, deed, or other instrument charged with any duty, *but which shall be separate and distinct from,* and not indorsed on or annexed to such agreement, lease, tack, bond, deed, or other instrument.	
Where any such schedule, inventory, or catalogue shall be so referred to in or by any such agreement, lease, tack, bond, deed, or other instrument chargeable with any Stamp Duty not exceeding 10*s.*, *exclusive of progressive duty* . .	*The same duty* (exclusive of progressive duty) *as shall be so chargeable on such agreement, lease, tack, bond, deed, or other instrument.*
And where any such schedule, inventory, or catalogue shall be referred to in or by any lease, tack, bond, deed, or such other instrument as aforesaid, chargeable with any Stamp Duty exceeding 10*s.*, *exclusive of progressive duty* . . .	0 10 0
And if in any of the said cases such schedule, inventory, or catalogue shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words . . .	*A further* progressive duty *of the same amount as the duty hereinbefore charged thereon respectively.*
The duties under the head SCHEDULE are imposed by the 13 & 14 Vict. c. 97,	
Exemptions from the preceding and all other Stamp Duties. Printed Proposals published by any Corporation or Company respecting Insurances, and which shall be referred to in or by any policy or instrument of insurance issued by such corporation or company.	
SCRIP CERTIFICATE.—See CERTIFICATE.	
SEA INSURANCE.—See POLICY.	
SEARCHES.—For and in respect of extracts or abstracts from deeds or other acts issued from the Office for Registry of deeds and so forth in Ireland, called the Registry Office, and commonly called a *common search,* and whether such search shall contain the extract from any deeds or deed, or not, and whether the same be signed by or on behalf of any officer or clerk belonging to such office, or not;	

	Duty. £	s.	d.
SEARCHES—*continued.*			
For every sheet or piece of paper on which such search, extract or extracts, abstract or abstracts, shall be written .	0	3	0
And for and in respect of searches for deeds or abstracts, or extracts from deeds, or other acts, issued from the office for registering deeds in Ireland, called the Register Office, commonly called a *negative search;*			
For each copy of any deed or memorial, or for each extract or abstract from any deed or memorial which such negative search shall contain . . .	0	3	0
And on the officer's certificate on such search, over and above all other duties	0	10	0
8 & 9 Vict. c. 76, s. 2.			
SEISIN.—Instrument of Seisin, given upon any charter, precept of clare constat, or precept from Chancery, or upon any wadset, heritable bond, disposition, apprizing, adjudication, or otherwise, of any lands or heritable subjects in Scotland, not of burgage tenure .	0	5	0
And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further *progressive* duty of	0	5	0
13 & 14 Vict. c. 97.			
SETTLEMENT.—Any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration other than a *bonâ fide* pecuniary consideration, whereby any *definite and certain* principal sum or sums of money, (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects, or not,) or any *definite and certain* share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, OR OF ANY OTHER COMPANY OR CORPORATION, shall be settled or agreed to be settled upon or for the benefit of any person or persons either in possession or reversion,			

The *ad valorem* duties on SETTLEMENTS payable prior to the 11th of October, 1850, in Great Britain, under the 55 Geo. III. c. 184, and in Ireland, under the 5 & 6 Vict. c. 82, were as follows, *viz.:*—

SETTLEMENT.—Any deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration other than a *bonâ fide* pecuniary consideration, whereby any *definite and certain* principal sum or sums of money, (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not, AND IF CHARGED OR CHARGEABLE ON LANDS OR OTHER HEREDITAMENTS OR HERITABLE SUBJECTS, WHETHER TO BE RAISED AT ALL EVENTS OR NOT,) or any *definite and certain* share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, shall be settled or agreed to be settled upon or for the benefit of any person or persons, either in possession or reversion, either absolutely, OR CONDITIONALLY OR CONTINGENTLY, or for life or other partial interest, or in any other manner whatsoever.

				£	s.	d.
If such sum or sums of money or the value of such share or shares in all or any of the said stocks or funds, or both, shall not amount to 1000*l.*				£1	15	0
And if the same shall amount to £1,000	and not to	£2,000	. . . . .	2	0	0
,, 2,000	,,	3,000	. . . . .	3	0	0
,, 3,000	,,	4,000	. . . . .	4	0	0
,, 4,000	,,	5,000	. . . . .	5	0	0
,, 5,000	,,	7,000	. . . . .	7	0	0
,, 7,000	,,	9,000	. . . . .	9	0	0
,, 9,000	,,	12,000	. . . . .	12	0	0
,, 12,000	,,	15,000	. . . . .	15	0	0
,, 15,000	,,	20,000	. . . . .	20	0	0
,, 20,000 or upwards		——	. . . . .	25	0	0

With progressive duties of 25*s.* each

	Duty. £	s.	d.
SETTLEMENT—*continued.*			
either absolutely, or for life or other partial interest, or in any other manner whatsoever;			
If such sum or sums of money, or the value of such share or shares in all or any of the said stocks or funds, or of such one or more of the said articles as shall be so settled or agreed to be settled, or both such sum or sums of money and the value of one or more of such articles together, shall not exceed in the whole 100*l.*	0	5	0
And if the same shall exceed 100*l.*, then for every 100*l.* and also for any fractional part of 100*l.*	0	5	0
And all deeds or instruments chargeable with the said *ad valorem* duty which shall also contain any settlement of lands or other property, or contain any other matter or thing besides the settlement of such money or stock, shall be chargeable with such further stamp duty as any separate deed or instrument containing such settlement of lands or other property, or other matter or thing, would have been chargeable with, exclusive of the *progressive* duty.			
And where there shall be more than one such deed or instrument for effecting any such settlement as aforesaid, chargeable with any such duty or duties exceeding 1*l.* 15*s.*, one of them only shall be charged with the said *ad valorem* duty; and also where any settlement shall be made in pursuance of any previous articles chargeable with and which shall have paid any such duty or duties exceeding 1*l.* 15*s.*, such last-mentioned settlement shall not be chargeable with the said *ad valorem* duty; and the said deeds and instruments respectively not chargeable with the said *ad valorem* duty shall be charged with the duty to which the same may be liable under any more general description in this TABLE; and on the whole being produced, duly executed and duly stamped, as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.			
And see PROGRESSIVE DUTY.			
See also DUPLICATE or COUNTERPART for the duty now chargeable on the duplicate of a Settlement.			
The duties on Settlements are imposed by 13 *&* 14 *Vict. c.* 97.			

Exemptions from the preceding ad valorem *Duties on Settlements.*

Bonds, Mortgages, and other securities operating as settlements, if chargeable with the ad valorem *duties on bonds and mortgages.*

Deeds or instruments of appointment or apportionment, in execution of powers given by any previous settlement, deed, or will, to or in favour of persons specially named or described as the objects of such powers.

Deeds or instruments merely declaring the trusts of any money or stock, pursuant to any previous settlement, deed, or will, or for securing any gifts or dispositions made by any previous settlement, deed, or will.

Wills, testaments and testamentary instruments, and dispositions mortis causâ *of every description.*

These exemptions are contained in the 55 Geo. III. c. 184.

	Duty. £	s.	d.
SHIPS and VESSELS.—See General Exemptions at the end of this part of the TABLE.			
SILVER plate.—See PLATE.			
SOLICITOR.—See ADMISSION—CERTIFICATE.			
STATUTE merchant, or staple.—See RECOGNIZANCE.			
SURNAME or ARMS, licence to use.—See GRANT.			
SURRENDER upon the sale of lands or other property.—See CONVEYANCE.			
SURRENDER of COPYHOLD lands or tenements.—See COPYHOLD—MORTGAGE.			
SURRENDER of LEASE.—See LEASE.			
SURRENDER (*not otherwise charged, nor expressly exempted from all Stamp Duty*) of any term or terms of years, or of any freehold or uncertain interest in any lands, hereditaments, or heritable subjects, not being of copyhold or customary tenure . . . And see PROGRESSIVE DUTY.	1	15	0
TACK of LANDS, &c., in Scotland, belonging to the Crown.—See GRANT.			
TACK of LANDS, &c., in Scotland, not belonging to the Crown.—See LEASE.			
TACK in Security.—See MORTGAGE.			
TESTIMONIAL or certificate of the admission of any person to the degree of a Bachelor of Arts in any of the Universities in England or Ireland	3	0	0
TESTIMONIAL or certificate of the admission of any person to any other degree in any of the said Universities . . .	10	0	0
TRANSFER of any share in the *Stock and Funds* of the Governor and Company of the BANK OF ENGLAND, or the BANK OF IRELAND, or of the SOUTH SEA COMPANY, whether upon a sale or otherwise (*a*)	0	7	9
TRANSFER of any share in the *Stock and Funds* of the EAST INDIA COMPANY, and (5 & 6 Will. IV. c. 64, s. 5) of any part of the territorial debt in the books of the said Company in England, whether upon a sale or otherwise	1	10	0
TRANSFER of any share or shares in the Stock and Funds of *any other* corporation, company, or society whatever, *upon the sale* thereof, or by way of *mortgage or security*.—See CONVEYANCE—MORTGAGE.			
TRANSFER of any share or shares in the Stock and Funds of *any other* corporation, company, or society whatever, *not otherwise charged under the head of mortgage, or of conveyance upon the sale of any property*	1	10	0
TRANSFER upon the sale of any other property.—See CONVEYANCE.			
TRANSFER of bond.—See BOND.			
TRANSFER of mortgage, wadset, or other security.—See MORTGAGE.			
UNIVERSITIES.—See ADMISSION—TESTIMONIAL.			
VALUATION.—See APPRAISEMENT.			

(*a*) It is understood that exemption from this duty is claimed in favour of Bank of Ireland Stock under the 1 & 2 Geo. IV. c. 72, and other Acts.

	Duty. £	s.	d.
WADSET.—See MORTGAGE.			
WARRANT of ATTORNEY (with or without a release of errors) to confess and enter up a judgment in any of Her Majesty's Courts at Westminster, or in Ireland, or in any of the Courts of the Counties Palatine of Lancaster and Durham, or in any other Court of Record holding pleas where the debt or damage amounts to 40*s.*, which shall be given as a security for the payment of any sum or sums of money, or for the transfer of any share or shares in any of the Government or Parliamentary Stocks or Funds, or in the Stock and Funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of *any other* company or corporation; *The same duty as on a bond for the like purpose.*			
Save and except where such payment or transfer shall be already secured by a bond, mortgage, or other security, which shall have paid the proper ad valorem *duty on bonds or mortgages imposed by law at the date thereof, exceeding in amount the sum of* 5*s.*; *and also, except where the warrant of attorney shall be given for securing any sum or sums of money exceeding* 200*l.*, *for which the person giving the same shall then be in actual custody under an arrest on mesne process or in execution;* and in those excepted cases a duty of . . .	0	5	0
Further Exemption. Warrants of attorney to confess judgment granted by high constables or collectors of Grand Jury Cess in Ireland.—9 & 10 *Vict. c.* 60.			
WARRANT of ATTORNEY *not otherwise charged* . .	1	15	0
The duties on Warrants of Attorney are imposed by the 13 & 14 Vict. c. 97.			
WARRANT or ORDER beneficial, under the sign manual of Her Majesty, her heirs or successors, *except where the same shall be for the service of the Navy, Army, or Ordnance* . . .	1	10	0
And where the same shall be for the service of the Navy, Army, or Ordnance	0	12	6
And where several persons shall be separately and distinctly (and not jointly) benefited by one warrant, the proper duty shall be charged in respect of each such person.			
WRITER to the signet.—See ADMISSION—CERTIFICATE.			
WRIT of ACKNOWLEDGMENT by any person infeft of lands in Scotland in favour of the heir or disponee of a creditor fully vested in right of an heritable security constituted by infeftment .	0	10	0
16 & 17 Vict. c. 63, s. 6.			
WRIT of COVENANT for levying a fine . . .	2	0	0
WRIT of ENTRY for suffering a common recovery . .	2	0	0
WRIT of ERROR	1	0	0
The duties on these writs will be found in the 55 Geo. III. c. 184, schedule, part 2. The two former have not been repealed, though fines and recoveries have been abolished in England.			
GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.			
All bonds, contracts, mortgages, conveyances, deeds, and instruments whatever, exempted from Stamp Duty by the Act of the 17th Geo. III. c. 53, *or any other Act or Acts of Parliament in force for promoting the residence of the parochial clergy, by making provision for building, repairing, or purchasing houses and other buildings for the use of their benefices.*			

Duty.
£ s. d.

GENERAL EXEMPTIONS—*continued.*

All affidavits, contracts, mortgages, conveyances, deeds, and instruments whatever, exempted from Stamp Duty by the 42nd Geo. III. c. 116, *or any other Act or Acts of Parliament in force relating to the redemption and sale of the Land Tax.*

All transfers of shares in the Government or Parliamentary Stocks or Funds.

All grants, leases, and other conveyances and instruments exempted from Stamp Duty by any Act or Acts of Parliament in force relating to the Land Revenues of the Crown.

All bonds, contracts, and assignments relating to the transportation of convicts.

The foregoing Exemptions are contained in 55 Geo. III. c. 184.

All bills of sale, conveyances, assignments, and other deeds and instruments whatever for the sale, transfer, or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel.

6 *Geo. IV. c.* 41, *s.* 1, *United Kingdom.*

The following are General Exemptions contained in certain Acts not otherwise relating to Stamp Duties :—

Bankrupt Act. No deed, conveyance, assignment, surrender, admission, or other assurance of, or to, or relating solely to any freehold, leasehold, copyhold or customary messuages, lands or tenements, or to any mortgage, charge or other incumbrance upon, or any estate, right or interest of and in any messuages, lands, tenements, or personal estate, being the estate of, or belonging to any bankrupt, and which, after the execution of such deed, &c., shall, either at Law or in Equity, be or remain the estate and property of such bankrupt or his assignee; and no power of attorney, writ of *supersedeas* or *procedendo*, certificate of conformity, affidavit, or other instrument or writing whatsoever relating solely to the estate or effects of any bankrupt, or to any proceeding under any bankruptcy, and no advertisement inserted in the London Gazette relating solely to matters in bankruptcy, to be liable to any stamp duty, or to any other duty whatsoever, save and except the stamp in lieu of fees (*a*).

12 & 13 Vict. c. 106, s. 138—England.
6 & 7 Will. IV. c. 14, s. 116 } Ireland.
12 & 13 Vict. c. 107, s. 115 }

Insolvent Debtors Act. Letters of attorney, affidavits, certificates or other proceedings, instruments or writings whatsoever, before or under any order of the Court for the relief of insolvent debtors, or before or under any order of any Commissioner thereof, or before any Justice or Justices of the Peace acting in the execution of the Act, and copies thereof, and advertisements inserted in any newspaper by the direction of the Court, relating to matters within the jurisdiction of the said Court.

1 & 2 Vict. c. 110, s. 116—England.
3 & 4 Vict. c. 107, s. 102—Ireland.

Church Building Acts. By the 59 Geo. III. c. 134, s. 35, the Commissioners are authorized under the direction of the Treasury to allow the full amount of the stamp duties upon any deeds, bonds, contracts, agreements or instruments made in relation to the purchasing or procuring of any sites, or building any churches, or purchasing or providing any materials for any such buildings; but by the 3 Geo. IV. c. 72, s.

(*a*) In *Flather* v. *Stubbs*, 2 A. & E. (N. S.) 614, it was held that a contract of sale of certain property of a bankrupt, signed by the purchaser, was within the exemption contained in the 6 Geo IV. c. 16, s. 98, which was the same as the present.

38, reciting the above provision, all deeds of gift, grants, securities, contracts, agreements, deeds, and conveyances, or other instruments made for any of the purposes in the said Act, or the 58 Geo. III. c. 45, mentioned, or for any other of the purposes or under any of the provisions in the said Acts, or either of them, or of that Act (3 Geo. IV.), or for carrying into execution any of the powers, authorities, regulations, purposes, or provisions thereof, or therein mentioned respectively are declared to be exempt from stamp duties.

Poor law.—England:

Advertisements inserted by or under the direction of the Poor Law Commissioners in the "London Gazette," or any newspaper, for the purpose of carrying into effect any provisions of the Act, mortgages, bonds, instruments, or assignments thereof, given by way of security in pursuance of the rules, orders, or regulations of the said Commissioners, and conformable thereto, contracts and agreements, appointments of officers, made or entered into in pursuance of such rules, orders, or regulations, and conformable thereto, and other instruments made in pursuance of the Act, and also the appointments of paid officers engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor rate. 4 & 5 Will. IV. c. 76, s. 86 (*b*).

Bonds and other securities at any time before or to be at any future time made or entered into in pursuance of the 22 Geo. III. c. 83, and assignments or transfers thereof, are to be deemed to be or to have been not subject or liable to any stamp duty whatever. Ib. s. 87.

Ireland.

Advertisements inserted by or under the direction of the Poor Law Commissioners in the London or Dublin Gazette, or any newspaper, for the purpose of carrying into effect any provisions of the Act, charges, mortgages, bonds, and instruments given by way of security in pursuance of the orders of the Commissioners, and conformable thereto, transfers thereof, contracts or agreements made or entered into in pursuance of such orders, and conformable thereto, conveyances, demises, or assignments respectively, to or by the Commissioners, receipts for rate, and other instruments made in pursuance of the Act, and appointment of paid officers engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor rate. 1 & 2 Vict. c. 5, s. 96.

Tithe commutation.

Advertisements inserted by direction of the Tithe Commissioners, or any Assistant Commissioner, or by any tithe owner or land owner, in the "London Gazette," or in any newspaper, for the purpose of carrying into effect any provision of the Act, and agreements, awards, or powers of attorney made or confirmed, or used under the Act. 6 & 7 Will. IV. c. 71, s. 91.

Deeds or declarations authorized by the Act for the merging of tithes. 1 Vict. c. 69, s. 12, and 1 & 2 Vict. c. 64, s. 2.

Inclosure Act.

Advertisements inserted by the direction of the Commissioners, or any Assistant Commissioner acting in the matter of any enclosure, in the "London Gazette," or in any newspaper, for the purpose of carrying into effect any provision of the Act; and agreements, awards, bonds, or powers of attorney made, or confirmed, or used under the Act. 8 & 9 Vict. c. 118, s. 163.

Friendly Societies.—England.

Orders of the registrar, copies of rules, powers, warrants, or letters of attorney granted by any persons as trustees of any society or branch established under the Act, for the transfer of any share in the public funds standing in the name of any such trustee, receipts for money contributed to the funds of any such society or branch, or money received by any member, his executors or administrators, assigns, or attorneys, from the funds of the society, bonds to be given to or on account of any such society or branch (*c*), or by the treasurer, or trustee, or any officer thereof, drafts or orders, forms of policy, appointment of

(*b*) See *The Guardians of the Banbury Union* v. *Robinson*, 12 L. J. R. (N. S.), Q. B. 327; 4 A. & E. (N. S.), 919; and 1 Dav. & M. 92; where it was held that a contract for sale of land by the Union under the 5 & 6 Will. 4, c. 69, s. 3, was held to be within this exemption. The two Acts are under the 5 & 6 Vict. c. 57, s. 18, to be taken together.

(*c*) In *Carter* v. *Bond*, 4 Esp. 253, a bond given by a publican, at whose house a Friendly Society was held, for the safe

agents, certificates, and other instruments for the revocation of any such appointment, or documents whatever required or authorized by or in pursuance of the Act. 13 & 14 Vict. c. 115, s. 39 (*d*).

NOTE.—Friendly Societies established under any former Act, which grant annuities exceeding 30*l.* a year, or assure sums exceeding 100*l.*, are not entitled to the privilege of this exemption in respect of any of their transactions, whether involving sums exceeding those amounts or not. Societies formed under the present Act are prohibited from assuring money exceeding the sums specified.

Limitation. The exemption in former Acts is restricted to those Societies which do not assure any sum exceeding 100*l.*, or 30*l. per annum*, or 20*s. per* week.

Building Societies. Rules of benefit building societies, and copies thereof, and transfers of shares in such societies. 6 & 7 Will. IV. c. 32, s. 8 (*e*).

Loan Societies.—England. Debentures for sums deposited with any loan society. Bonds or securities given by the treasurer or other person intrusted with the receipt or custody of money or securities. Notes for the repayment of loans (*f*), receipts or entries in any book of receipt for money lent or paid, drafts or orders, appointments of agents, and all other instruments whatever required to be made in pursuance of this Act, or of the rules of the society. 3 & 4 Vict. c. 110, ss. 9, 12, and 14.

Ireland. Notes or securities for the repayment of loans made by any society established or acting under this Act, receipts or entries in any book of receipt for money lent or paid, debentures or transfers, drafts or orders, appointments of agents, bonds, securities, and other instruments or documents whatever required or authorized to be given, issued, made, or provided in pursuance of the rules of any such society or of this Act. 6 & 7 Vict. c. 91, s. 16.

Drainage.—Ireland. Bonds and other securities given to the Commissioners under the Drainage Act in Ireland, and all certificates and other instruments made under the Act. 9 & 10 Vict. c. 101.

Woods and Forests. Contracts made by or with the Commissioners of Woods and Forests under the 10 Geo. IV. c. 50, for the sale, purchase, or exchange of property by them; and deeds, receipts, and other instruments for carrying the same into effect, or incidental thereto, or connected therewith. Grants by the said Commissioners, and leases, agreements for and counterparts of leases, and appointments of officers made or granted under the Act; and bonds by or for any receiver, officer, or agent from or by whom security may be required by the said Commissioners. 10 Geo. IV. c. 50, s. 77.

Public Health Act. Advertisements inserted by the General or Local Board in the "London Gazette," or any newspaper, under the Act or for carrying the same into effect; deeds, awards, submissions, instruments, contracts, agreements, and writings made or executed by the said General or Local Board, their officers or servants, under, or for the purposes of the Act; appointments by the General or Local Board of officers or persons under the Act. 11 & 12 Vict. c. 63, s. 151.

Mercantile Marine. All instruments made in forms sanctioned by the Board of Trade (including agreements with crews and indentures of apprenticeship to the sea service), 13 & 14 Vict. c. 93, s. 22.

custody and production of a box containing the subscriptions to the society, was admitted without a stamp, under a similar exemption in the 33 Geo. III. c. 54, s. 4.

(*d*) See *The Queen* v. *Scott*, 13 L. J. R. (N. S.), Mag 70; and *The Queen* v. *Shortridge*, 1 Dowl. & L. 855, as to certain societies not being societies within the Acts relating to Friendly Societies, notwithstanding their being enrolled as such.

(*e*) Building Societies, enrolled under the 10 Geo. IV. c. 56, have been held, in the case of *Walker* v *Giles*, 13 Jur. 588, confirmed by *Barnard* v. *Filsworth*, 6 M. G. & S. 698, *note*, to be entitled, also, to the exemptions contained in that Act.

(*f*) Notes given to the trustees before the enrolment of the rules, but after the transcript had been certified by the barrister and returned to the society, were held, in *Bradburne* v. *Whitbread*, 12 L. J. R. (N. S.), C. P., 218, to be within the exemption contained in the 5 & 6 Will. IV. c. 32, s. 7, since repealed.

PART THE SECOND.

Containing the Duties on PROBATES of Wills and Letters of ADMINISTRATION; on CONFIRMATIONS of Testaments, testamentary and dative; on INVENTORIES to be exhibited in the Commissary Courts in Scotland; and on LEGACIES out of Real or Personal, Heritable or Moveable Estate: and on SUCCESSIONS to Personal or Moveable Estates upon Intestacy, imposed by the 55 Geo. III. c. 184, and to be found in the third part of the schedule thereto; and also, the Duties on SUCCESSIONS imposed by the 16 and 17 Vict. c. 51.

			Duty. £	s.	d.
PROBATE of a will, and letters of administration with a will annexed to be granted in England or Ireland.					
CONFIRMATION of any testament testamentary, or eik thereto, to be expeded in any Commissary Court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804;					
INVENTORY to be exhibited and recorded in any Commissary Court in Scotland of the estate and effects of any person deceased who shall have died after the 10th day of October, 1808, and have left any testament or testamentary disposition of his or her personal or moveable estate and effects, or any part thereof; Where the estate and effects for or in respect of which such probate, letters of administration, confirmation, or eik respectively, shall be granted or expeded, or whereof such inventory shall be exhibited and recorded, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially*, shall be					
above the value of	20*l.* and under the value of	100*l.*	0	10	0
of the value of	100*l.* ———	200*l.*	2	0	0
———	200*l.* ———	300*l.*	5	0	0
———	300*l.* ———	450*l.*	8	0	0
———	450*l.* ———	600*l.*	11	0	0
———	600*l.* ———	800*l.*	15	0	0
———	800*l.* ———	1,000*l.*	22	0	0
———	1,000*l.* ———	1,500*l.*	30	0	0
———	1,500*l.* ———	2,000*l.*	40	0	0
———	2,000*l.* ———	3,000*l.*	50	0	0
———	3,000*l.* ———	4,000*l.*	60	0	0
———	4,000*l.* ———	5,000*l.*	80	0	0
———	5,000*l* ———	6,000*l.*	100	0	0
———	6,000*l.* ———	7,000*l.*	120	0	0
———	7,000*l.* ———	8,000*l.*	140	0	0
———	8,000*l.* ———	9,000*l.*	160	0	0
———	9,000*l.* ———	10,000*l.*	180	0	0
———	10,000*l.* ———	12,000*l.*	200	0	0
———	12,000*l.* ———	14,000*l.*	220	0	0

PROBATE—*continued.*

			Duty. £ s. d.
of the value of	14,000*l.* and under the value of	16,000*l.*	250 0 0
———	16,000*l.* ———	18,000*l.*	280 0 0
———	18,000*l.* ———	20,000*l.*	310 0 0
———	20,000*l.* ———	25,000*l.*	350 0 0
———	25,000*l.* ———	30,000*l.*	400 0 0
———	30,000*l.* ———	35,000*l.*	450 0 0
———	35,000*l.* ———	40,000*l.*	525 0 0
———	40,000*l.* ———	45,000*l.*	600 0 0
———	45,000*l.* ———	50,000*l.*	675 0 0
———	50,000*l.* ———	60,000*l.*	750 0 0
———	60,000*l.* ———	70,000*l.*	900 0 0
———	70,000*l.* ———	80,000*l.*	1,050 0 0
———	80,000*l.* ———	90,000*l.*	1,200 0 0
———	90,000*l.* ———	100,000*l.*	1,350 0 0
———	100,000*l.* ———	120,000*l.*	1,500 0 0
———	120,000*l.* ———	140,000*l.*	1,800 0 0
———	140,000*l.* ———	160,000*l.*	2,100 0 0
———	160,000*l.* ———	180,000*l.*	2,400 0 0
———	180,000*l.* ———	200,000*l.*	2,700 0 0
———	200,000*l.* ———	250,000*l.*	3,000 0 0
———	250,000*l.* ———	300,000*l.*	3,750 0 0
———	300,000*l.* ———	350,000*l.*	4,500 0 0
———	350,000*l.* ———	400,000*l.*	5,250 0 0
———	400,000*l.* ———	500,000*l.*	6,000 0 0
———	500,000*l.* ———	600,000*l.*	7,500 0 0
———	600,000*l.* ———	700,000*l.*	9,000 0 0
———	700,000*l.* ———	800,000*l.*	10,500 0 0
———	800,000*l.* ———	900,000*l.*	12,000 0 0
———	900,000*l.* ———	1,000,000*l.*	13,500 0 0
———	1,000,000*l.* and upwards	.	15,000 0 0

LETTERS of ADMINISTRATION, without a will annexed, to be granted in England or Ireland;

CONFIRMATION of any TESTAMENT dative, to be expeded in any Commissary Court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804;

INVENTORY to be exhibited and recorded in any Commissary Court in Scotland of the estate and effects of any person deceased who shall have died after the 10th day of October, 1808, without leaving any testament or testamentary disposition of his or her personal or moveable estate or effects or any part thereof;

Where the estate and effects for or in respect of which such letters of administration or confirmation respectively shall be granted or expeded, or whereof such inventory shall be exhibited and recorded, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially,* shall be

above the value of	20*l.* and under the value of	50*l.*	0 10 0
of the value of	50*l.* ———	100*l.*	1 0 0
———	100*l.* ———	200*l.*	3 0 0
———	200*l.* ———	300*l.*	8 0 0
———	300*l.* ———	450*l.*	11 0 0
———	450*l.* ———	600*l.*	15 0 0
———	600*l.* ———	800*l.*	22 0 0
———	800*l.* ———	1,000*l.*	30 0 0

LETTERS of ADMINISTRATION—*continued.*

				Duty. £ s. d.
of the value of	1,000*l.*	and under the value of	1,500*l.*	45 0 0
———	1,500*l.*	———	2,000*l.*	60 0 0
———	2,000*l.*	———	3,000*l.*	75 0 0
———	3,000*l.*	———	4,000*l.*	90 0 0
———	4,000*l.*	———	5,000*l.*	120 0 0
———	5,000*l.*	———	6,000*l.*	150 0 0
———	6,000*l.*	———	7,000*l.*	180 0 0
———	7,000*l.*	———	8,000*l.*	210 0 0
———	8,000*l.*	———	9,000*l.*	240 0 0
———	9,000*l.*	———	10,000*l.*	270 0 0
———	10,000*l.*	———	12,000*l.*	300 0 0
———	12,000*l.*	———	14,000*l.*	330 0 0
———	14,000*l.*	———	16,000*l.*	375 0 0
———	16,000*l.*	———	18,000*l.*	420 0 0
———	18,000*l.*	———	20,000*l.*	465 0 0
———	20,000*l.*	———	25,000*l.*	525 0 0
———	25 000*l.*	———	30,000*l.*	600 0 0
———	30,000*l.*	———	35,000*l.*	675 0 0
———	35,000*l.*	———	40,000*l.*	785 0 0
———	40,000*l.*	———	45,000*l.*	900 0 0
———	45,000*l.*	———	50,000*l.*	1,010 0 0
———	50,000*l.*	———	60,000*l.*	1,125 0 0
———	60,000*l.*	———	70,000*l.*	1,350 0 0
———	70,000*l.*	———	80,000*l.*	1,575 0 0
———	80,000*l.*	———	90,000*l.*	1,800 0 0
———	90,000*l.*	———	100,000*l.*	2,025 0 0
———	100,000*l.*	———	120,000*l.*	2,250 0 0
———	120,000*l.*	———	140,000*l.*	2,700 0 0
———	140,000*l.*	———	160,000*l.*	3,150 0 0
———	160,000*l.*	———	180,000*l.*	3,600 0 0
———	180,000*l.*	———	200,000*l.*	4,050 0 0
———	200,000*l.*	———	250,000*l.*	4,500 0 0
———	250,000*l.*	———	300,000*l.*	5,625 0 0
———	300,000*l.*	———	350,000*l.*	6,750 0 0
———	350,000*l.*	———	400,000*l.*	7,875 0 0
———	400,000*l.*	———	500,000*l.*	9,000 0 0
———	500,000*l.*	———	600,000*l.*	11,250 0 0
———	600,000*l.*	———	700,000*l.*	13,500 0 0
———	700,000*l.*	———	800,000*l.*	15,750 0 0
———	800,000*l.*	———	900,000*l.*	18,000 0 0
———	900,000*l.*	———	1,000,000*l.*	20,250 0 0
———	1,000,000*l.*	and upwards .	.	22,500 0 0

Exemptions from all Stamp Duties.

Probate of will, letters of administration, confirmation of testament and eik thereto, and inventory of the effects of any common seaman, marine, or soldier who shall be slain or die in the service of Her Majesty, her heirs or successors.

Additional inventory to be exhibited and recorded in any Commissary Court in Scotland, where the same shall not be liable to a duty of greater amount than the duty already paid upon any former inventory exhibited and recorded of the estate and effects of the same person.

Probate of the will, and letters of administration to the estate and effects of any deceased depositor in any savings bank, where

Duty.
£ s. d.

LETTERS of ADMINISTRATION—*continued.*

the whole of his estate and effects shall not exceed the value of 50*l.* 9 *Geo. IV. c.* 92, *s.* 40.

LEGACIES and SUCCESSIONS to personal or moveable estate upon Intestacy.

I. *Where the Testator, Testatrix, or Intestate died before or upon the 5th day of April,* 1805.

For EVERY LEGACY, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or upwards, given by any will or testamentary instrument of any person who died before or upon the 5th day of April, 1805, out of his or her personal or moveable estate, and which shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August, 1815, in Great Britain, or after the 9th day of October, 1842, in Ireland.

Also for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person who died before or upon the 5th day of April, 1805, (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue, or share of residue, shall be of the amount or value of 20*l.* or upwards, and where the same shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August, 1815, in Great Britain, or after the 9th day of October, 1842, in Ireland.

Where any such legacy or residue, or share of such residue, shall have been given, or have devolved, to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased,* a duty at and after the rate of 2*l.* 10*s. per cent.* on the amount or value thereof . . — *per cent.* 2 10 0

Where any such legacy or residue, or share of such residue, shall have been given or have devolved, to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased,* a duty at and after the rate of 4*l. per cent.* on the amount or value thereof . . . . — *per cent.* 4 0 0

Where any such legacy or residue, or share of such residue, shall have been given or have devolved, to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased,* a duty at and after the rate of 5*l. per cent.* on the amount or value thereof . — *per cent.* 5 0 0

And where any such legacy or residue, or share of such residue, shall have been given or have devolved, to or for the benefit of any person *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased,* a duty at and after the rate of 8*l. per cent.* on the amount or value thereof . — *per cent.* 8 0 0

II. *Where the Testator, Testatrix, or Intestate shall have died after the 5th day of April,* 1805.

For EVERY LEGACY, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or upwards, given by any

LEGACIES and SUCCESSIONS—*continued.*

Duty. £ s. d.

will or testamentary instrument of any person who shall have died after the 5th day of April, 1805, either out of his or her PERSONAL or *moveable* ESTATE, or out of or charged upon his or her real or heritable estate, or out of any moneys to arise by the sale, mortgage, or other disposition of his or her REAL or *heritable* ESTATE, or any part thereof, and which shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August, 1815, in Great Britain, or after the 9th day of October, 1842, in Ireland.

Also for the CLEAR RESIDUE (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the PERSONAL or *moveable* ESTATE of any person, who shall have died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue or share of residue shall be of the amount or value of 20*l.* or upwards, and where the same shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August, 1815, in Great Britain, or after the 9th day of October, 1842, in Ireland.

And also for the CLEAR RESIDUE (when given to one person) and for every share of the clear residue (when given to two or more persons) of the moneys *to arise from the sale*, mortgage, or other disposition of any REAL or *heritable* ESTATE, directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument, of any person who shall have died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies, and other charges first made payable thereout, if any), where such residue, or share of residue, shall amount to 20*l.* or upwards, and where the same shall be paid, retained, or discharged after the 31st day of August, 1815, in Great Britain, or after the 9th day of October, 1842, in Ireland.

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of *a child of the deceased, or any descendant of a child of the deceased*, or to or for the benefit of *the father or mother, or any lineal ancestor of the deceased*, a duty at and after the rate of 1*l. per cent.* on the amount or value thereof . — *per cent.* 1 0 0

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased*, a duty at and after the rate of 3*l. per cent.* on the amount or value thereof . . . — *per cent.* 3 0 0

Where any such legacy or residue, or any share of such residue shall have been given, or have devolved to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased*, a duty at and after the rate of 5*l. per cent.* on the amount or value thereof . . . . — *per cent.* 5 0 0

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of *a brother or sister of a grandfather or grandmother of the*

LEGACIES—*continued.*

	Duty. £ s. d.
deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased, a duty at and after the rate of 6*l. per cent.* on the amount or value thereof . .	*per cent.* 6 0 0
And where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of any person *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased,* a duty at and after the rate of 10*l. per cent.* on the amount or value thereof	*per cent.* 10 0 0
And all gifts of annuities, or by way of annuity, or of any other partial benefit or interest out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this TABLE.	
And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument, which shall together be of the amount or value of 20*l.* each shall be charged with duty, though each or either may be separately under that amount or value.	

NOTE.—The value of an annuity, whether in Great Britain or Ireland, is to be calculated according to the Tables annexed to the 16 & 17 Vict. c. 51. See TABLE, p. 805.

Exemptions.

Legacies and residues, or shares of residue, of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the Royal Family.

And all legacies which were exempted from duty by the Act passed in the 39 *Geo. III. c.* 73, *for exempting certain specific legacies given to bodies corporate, or other public bodies, from the payment of duty:* [viz. *books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles which shall be given or bequeathed to, or in trust for any body corporate, whether aggregate or sole, or any endowed school in order to be kept and preserved by such body corporate, society or school, and not for the purposes of sale.*]

The above exemptions are contained in the 55 Geo. III. c. 184.

Legacies and residue, or shares of residue, of or out of the estate and effects of any deceased depositor in any savings bank, where the whole of such estate and effects shall not exceed the value of 50*l.*

9 *Geo. IV. c.* 92, *s.* 40.

Legacies given for the education or maintenance of poor children in Ireland, or to be applied in support of any public charitable institution in Ireland or for any purpose (in Ireland) merely charitable.

5 *&* 6 *Vict. c.* 82, *s.* 38.

SUCCESSION DUTIES,

16 & 17 VICT. c. 51.

	Duty. £ s. d.
In respect of every SUCCESSION under the above-mentioned Act, according to the value thereof:—	
Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value	*per cent.* 1 0 0
Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value . .	3 0 0
Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value	5 0 0
Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value .	6 0 0
Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is herein-before described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value . .	10 0 0
Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the 18th day of May, 1853, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after that day, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession;" and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.	

Duty.
£ s. d.

SUCCESSION—*continued.*

Exemptions.

Where the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons shall not amount in money or principal value to one hundred pounds, no duty shall be payable; and no duty shall be payable upon any succession, which, as estimated according to the provisions of this Act, shall be of less value than twenty pounds in the whole; or upon any monies applied to the payment of the duty on any succession according to any trust for that purpose; or by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts. And no person shall be charged with duty in respect of any interest surrendered by him or extinguished before the 19*th day of May,* 1853; *and no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty in respect of the same acquisition of the same property as a Succession.*

TABLE.

THE VALUES OF AN ANNUITY OF £100 PER ANNUM HELD ON A SINGLE LIFE.

Years of Age.	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
Birth.	1,892	8	6	48	1,300	9	6
1	1,906	13	0	49	1,271	19	6
2	1,919	2	0	50	1,242	19	6
3	1,926	8	0	51	1,213	17	0
4	1,928	16	0	52	1,185	14	0
5	1,926	19	6	53	1,157	17	6
6	1,921	12	0	54	1,130	13	0
7	1,913	4	6	55	1,103	18	0
8	1,902	16	6	56	1,077	10	0
9	1,890	19	6	57	1,051	10	0
10	1,878	3	0	58	1,025	10	0
11	1,864	7	0	59	999	1	0
12	1,849	12	0	60	972	1	0
13	1,833	18	6	61	943	15	6
14	1,817	7	6	62	914	2	0
15	1,800	8	6	63	883	6	0
16	1,783	13	0	64	852	9	0
17	1,767	16	0	65	821	12	6
18	1,753	5	6	66	790	15	0
19	1,740	11	0	67	761	19	0
20	1,729	9	6	68	733	8	6
21	1,719	17	0	69	705	4	0
22	1,713	1	0	70	677	9	0
23	1,706	16	6	71	650	8	0
24	1,700	11	6	72	623	19	6
25	1,694	0	0	73	597	7	6
26	1,686	14	6	74	569	13	0
27	1,677	5	6	75	541	0	6
28	1,667	1	0	76	511	9	6
29	1,656	1	0	77	477	17	0
30	1,644	7	6	78	444	9	6
31	1,632	0	0	79	412	9	6
32	1,619	0	6	80	381	3	0
33	1,605	4	0	81	350	14	6
34	1,590	9	6	82	321	14	6
35	1,574	17	6	83	292	10	0
36	1,558	9	6	84	263	2	0
37	1,541	10	6	85	234	18	6
38	1,524	0	0	86	207	16	0
39	1,506	1	6	87	184	11	6
40	1,487	10	0	88	164	17	6
41	1,468	4	0	89	148	7	0
42	1,447	11	6	90	133	9	0
43	1,426	2	0	91	122	16	0
44	1,403	10	0	92	107	7	0
45	1,379	14	6	93	93	3	0
46	1,354	16	6	94	79	8	6
47	1,328	2	6	95	64	11	0

BANKRUPTCY.

A TABLE of the STAMP DUTIES to be paid in lieu of Fees in Bankruptcy in ENGLAND, pursuant to the 12 & 13 Vict. c. 106.

	Duty. £	s.	d.
PETITION for adjudication of bankruptcy or for arrangement between any debtor and his creditors, under the superintendence and control of the Court, or for certificate of arrangement by deed . .	10	0	0
DECLARATION of insolvency	0	2	6
SUMMONS of trader debtor	0	2	6
ADMISSION or deposition of trader debtor . . .	0	2	6
BOND with sureties	0	5	0
APPLICATION for search for petition or other proceeding (except search for the appointment of any sitting or meeting) . .	0	1	0
ALLOCATUR by any officer of the Court for any costs, charges or disbursements,—			
Where such bill of costs shall not exceed 5*l.* . .	0	1	6
Exceeding 5*l.* and not exceeding 10*l.* . .	0	2	6
——— 10*l.* ——— 20*l.* . .	0	5	0
——— 20*l.* ——— 30*l.* . .	0	7	6
——— 30*l.* ——— 50*l.* . .	0	10	0
——— 50*l.* ——— 100*l.* . .	0	15	0
——— 100*l.* ——— 150*l.* . .	1	0	0
——— 150*l.* ——— 200*l.* . .	1	10	0
——— 200*l.* ——— 300*l.* . .	2	0	0
——— 300*l.* ——— 500*l.* . .	3	0	0
——— 500*l.*	5	0	0

A TABLE of STAMP DUTIES payable in IRELAND on certain proceedings in the superior Courts of Common Law, under the 13 & 14 Vict. c. 114, and the 16 & 17 Vict. c. 113; in the Civil Bill Courts under the 14 & 15 Vict. c. 57; and in the Courts of Equity, under the 4 Geo. IV. c. 78; charged (where not otherwise specified), on the first skin, sheet, or piece of vellum, parchment, or paper.

LAW FUND DUTIES.

Under the 13 & 14 Vict. c. 114, commencing 11th October, 1850.

IN IRELAND.

	Duty. £	s	d
AFFIDAVIT, affirmation, deposition, or declaration in lieu of affidavit, taken before any person authorized by law, in order to be used or filed in the civil side of the Court of Queen's Bench, or in the Court of Common Pleas, or in the pleas side of the Court of Exchequer in Ireland	0	2	0
APPEARANCE in any suit or proceeding whatsoever in any of the said Courts, on the requisition for the entry thereof, whether the same be for one defendant only, or for more than one jointly	0	2	0
BILL of COSTS, on each and every requisition for the taxation thereof by any taxing officer of the said Courts:—			
Where the gross amount of such costs, as furnished or made out and submitted for taxation, shall exceed five pounds and shall not exceed twenty pounds	0	2	6
Where the gross amount as aforesaid shall exceed twenty pounds and shall not exceed fifty pounds	0	5	0
Where the gross amount as aforesaid shall exceed fifty pounds and shall not exceed one hundred pounds	0	10	0
Where the gross amount as aforesaid shall exceed one hundred pounds	1	0	0
COPY, attested or to be attested by any officer, assistant, or clerk, of any record, judgment, declaration, pleading, affidavit, or other instrument, proceeding, matter, or thing enrolled, recorded, or filed in any of the said Courts, for each and every office sheet of seventy-two words, and for every fractional part of such sheet	0	0	4
COPY issuing from any office of the said Courts of any rule or order	0	2	0
JUDGMENT.—On the requisition for the entry of any judgment, final or interlocutory, of whatsoever nature, and whether on *cognovit actionem* or otherwise, in any of the said Courts, save and except any final judgment in any action wherein an interlocutory judgment shall have been entered	0	10	0
MEMORIAL of the assignment of any judgment in any of the said Courts for each judgment assigned	0	7	6
ORDER or RULE.—On the requisition for the entry of any order or rule made or granted in any cause or matter in any of the said Courts, in open court or in chamber, or by side bar, or by way of fiat or otherwise, whether the same shall be issued or not	0	4	0

	Duty. £	s.	d.
RECOGNIZANCE.—Any recognizance taken or acknowledged, for each cognizor	0	6	6
ENROLLING DEEDS.—Any fiat or acknowledgment for enrolling any deed	0	6	6
REPORTS.—Any report under interlocutory order	1	1	0
——— Under decretal order, pronounced in a short cause	2	2	0
——— Under decretal order, pronounced in a long cause	3	3	0
NOTICES.—Any notice, advertisement, or posting to sell lands, pursuant to any decree, or to set lands pursuant to any order or decree	1	1	0
LEASES and DEEDS.—Any lease, and any counterpart thereof, where the usual printed form will suffice	0	5	0
——— Any other deed where the usual printed form will suffice	0	10	0
——— Any lease, and any counterpart thereof, where the contract is of so special a nature that a special conveyance shall be prepared and engrossed	1	1	0
LEASES and DEEDS.—Any other contract of such special nature	2	2	0
——— Any deed executed by any Master in Chancery, or by the Chief Remembrancer in the Court of Exchequer, in the name of any party in a cause refusing or declining to execute such deed, or residing out of the jurisdiction, for each person so declining or refusing, or residing beyond such jurisdiction	0	5	0
——— Any deed of any other sort, which any Master in Chancery, or the Chief Remembrancer of the Court of Exchequer, shall be required to execute	2	2	0
Any ANSWER signed by any Master in Chancery, or by such Chief Remembrancer as guardian of any minor, or by any Master as committee of the estate of any lunatic	0	10	6
Any APPROBATION signed by any Master, or by such Chief Remembrancer, for the sale or transfer of stock	0	10	6
Any COMMISSION of LUNACY	4	11	0
Any PETITION signed and approved of by any Master, or by such Chief Remembrancer as guardian of any minor, or by any Master as committee of any lunatic.	0	6	6

Exemption.

Proceedings in Chancery relative to the misapplication of property vested in municipal corporations, or any commissioners or guardians of the poor, acting under the 3 & 4 *Vict. c.* 108, *for municipal purposes.*

NOTE.—*The duty of* 10*d. is to be paid in Irish currency, the other duties are payable in British currency.*

A TABLE of the STAMP DUTIES to be paid in lieu of Fees in the Office of the Registrar of Judgments in IRELAND, pursuant to the 13 & 14 Vict. c. 74.

	Duty. £	s.	d.
MEMORANDUM for the REGISTRATION of any JUDGMENT or rule for judgment, or for the Registration of any decree, order, or rule, according to the directions of the Act 7 & 8 Vict. c. 90 .	0	5	0
Memorandum for the RE-ENTRY of any JUDGMENT, decree, order, or rule, according to the provisions of the said Act . .	0	1	0
Memorandum for the REGISTRATION of any LIS PENDENS, according to the provisions of the said Act	0	2	6
Memorandum for the RE-ENTRY of any LIS PENDENS, according to the provisions of the said Act	0	1	0
Memorandum for the REGISTRATION of any RECOGNIZANCE, bond, judgment, or other obligation to the Crown, or of any Quietus thereof, according to the provisions of the said Act . .	0	2	6
REQUISITION for *liberty to search* in the books of the said office according to the provisions of the said Act, and without which requisition no such search is to be permitted; for each person searched against	0	1	0
Memorandum for the REGISTRATION of the SATISFACTION or vacate of any *judgment*, Crown bond, or recognizance, decree, rule, or order, or for the re-docketing of any Crown bonds, or recognizances, according to the provisions of the Act 11 & 12 Vict. c. 120 .	0	2	6
REQUISITION for *liberty to search* the books containing recorded copies of the *negative searches* in the said office, according to the provisions of the said Act, and without which requisition no such search is to be permitted; for each person searched against . .	0	1	0
ATTESTED COPY of a SEARCH recorded pursuant to the said Act, when such copy shall not exceed three folios of seventy-two words .	0	1	0
When such copy shall exceed three folios, for every folio . .	0	0	4
DOCKET or REQUISITION for a *search*, against each person,			
Negative search	1	0	0
Common search	0	7	0

No more than one docket or requisition against any one person to be necessary in any case, 7 & 8 Vict. c. 90.

A Table of Stamp Duties.

CHARGED ON CERTAIN INSTRUMENTS

PREVIOUSLY TO THE 44 GEO. III. c. 98,

(10 *October*, 1804,)

SHOWING THE DUTIES THAT WERE FROM TIME TO TIME PAYABLE ON SUCH INSTRUMENTS PRIOR TO AND UNTIL THAT PERIOD.

COPYHOLD AND CUSTOMARY ESTATES.

COPYHOLD.	Statute.	Commencement.	Duty.	Total Duty.
			s. d.	*s. d.*
Surrender of or admittance to copyholds. Grant or lease by Copy of Court Roll, and any other Copy of Court Roll (except surrender to the use of a will, and the Court Roll or book of proceedings) . . .	10 Ann. c. 19, s. 100	2 Aug. 1712	2 3	
The same	17 Geo. III. c. 50	6 July, 1777	2 3	4 6
The same (except where the yearly value does not exceed 20*s.*)	23 Geo. III. c. 58	2 Aug. 1783	2 6	7 0
The same (with the like exception)	37 Geo. III. c. 90	6 July, 1797	3 0	10 0

CUSTOMARY.

Copy of surrender of, and admittance to any custom-right estate, not being copyhold, which shall pass by surrender and admittance, or by admittance only, and not by deed . . . — *The same duties as above, (with reference, also, to value,)* except that instead of 2*s.* 3*d.* by each of the two first-mentioned Acts, 4*s.* 6*d.* was imposed by the second.

See the note at the end of the Table as to the mode of charging the duties.

DEEDS TO BE ENROLLED.

Statute.	Commencement.	Duty.	Total Duty.
		s. d.	*£ s. d.*
5 W. & M. c. 21	29 June, 1694	5 0	
17 Geo. III. c. 50	6 July, 1777	2 6	0 7 6
23 Geo. III. c. 58	2 Aug. 1783	2 6	0 10 0
37 Geo. III. c. 90	6 July, 1797	10 0	1 0 0
37 Geo. III. c. 111	2 Aug. 1797	10 0	1 10 0

See the note at the end of the Table as to the mode of charging the duties.

INDENTURE, LEASE, OR OTHER DEED.

NOT OTHERWISE CHARGED.

Statute.	Commencement.	Duty.		Total Duty.		
		s.	*d.*	£	*s.*	*d.*
5 W. & M. c. 21, s. 3	29 June, 1694	0	6			
9 Will. III. c. 25, s. 30	2 Aug. 1698	0	6	0	1	0
12 Anne, stat. 2, c. 9, s. 21	3 Aug. 1714	0	6	0	1	6
30 Geo. II. c. 19, s. 1	6 July, 1757	1	0	0	2	6
16 Geo. III. c. 34, s. 5	6 July, 1776	1	0	0	3	6
17 Geo. III. c. 50, s. 16	2 Aug. 1777	1	6	0	5	0
23 Geo. III. c. 58, s. 1	2 Aug. 1783	1	0	0	6	0
35 Geo. III. c. 30, s. 1	6 July, 1795	1	0	0	7	0
37 Geo. III. c. 90, s. 1	6 July, 1797	3	0	0	10	0
37 Geo. III. c. 111, s. 1	2 Aug. 1797	10	0	1	0	0
41 Geo. III. c. 10, s. 1	6 July, 1801	3	0	} 1	5	0
41 Geo. III. c. 86, s. 1	6 July, 1801	2	0			

The duties in this Table, *which were cumulative*, were charged upon every skin, or piece of vellum, or parchment, or sheet of paper upon which the instrument was written, except the duty of 10*s.* which was charged by the 37 Geo. III. c. 111, upon "every deed."

By the 19 Geo. III. c. 66, a quantity of words equal only to fifteen common law folios was allowed to be written on each skin, &c.; but by the 37 Geo. III. c. 19, this provision was repealed, and it was directed that where the quantity of folios on any skin, &c., did not exceed fifteen there should be one stamp only; where they amounted to thirty, two stamps; and so progressively, one further stamp for every entire fifteen folios, no stamp being required for any excess of words over and above every such entire quantity.

There were exceptions of certain instruments from the duties on indentures, &c.; and amongst others, the following, *viz.*:—

From the duties imposed by the 9 Will. III. c. 25, and the subsequent Acts, except the 37 Geo. III. c. 111;—*Indentures for binding poor parish children apprentices.*

From those imposed by the 12 Anne, stat. 2, c. 9, and the subsequent Acts, except the 37 Geo. III. c. 111;—*Indentures for binding out charity* as well as parish *children.*

From the duty of 10*s.* imposed by the 37 Geo. III. c. 111, the following, *viz.*:—

Letters of attorney.

Indentures of apprenticeship where a sum or value not exceeding 10*l. is given with the apprentice.*

Leases not exceeding twenty-one years, where the full improved annual value and rent reserved is not more than 10*l.*

Leases for lives, or years determinable on lives where the fine does not exceed 20*l. and the rent* 40*s.*

For removing doubts as to the construction of the last-mentioned Act, as to leaseholds, not exceeding twenty-one years, it is, by the 39 & 40 Geo. III. c. 72, s. 13, provided, that the duties granted by the former shall extend to every deed intended to form part of a conveyance whereby a greater interest than twenty-one years is conveyed, whatever may be the value.

A Chronological Abstract

OF THE

STATUTES IN IRELAND RELATING TO STAMP DUTIES

NOT COMPRISED IN THE PREVIOUS PART OF THIS WORK.

47 Geo. III. sess. 2, c. 18.

By this Act a duty of excise was granted upon gold and silver plate wrought in Ireland. Repealed by 5 & 6 Vict. c. 82.

47 Geo. III. sess. 2, c. 15.

For collecting the duty on plate in Ireland.

Plate to be assayed and marked.

Sect. 3.—All gold and silver plate wrought in Ireland to be assayed by the assay master appointed by the fraternity or company of goldsmiths of the city of Dublin, or by a deputy assay master, or other officer to be appointed by the company, in such parts of Ireland as they shall think fit; and if found of the proper standard to be touched with the marks by law required.

Note to be sent with plate, and the duty.

Sect. 5.—The manufacturer to send with every parcel of such gold or silver a note containing the day of the month and year, his name and place of abode, the species in such parcel of plate, and the number of each species, with the total weight and the duty thereupon; and to send also the duties.

Plate to be marked.

Sect. 6.—The assay master to mark with the mark of the King's Head, over and besides the several other marks directed by law, all such plate so sent; and receive the duty thereon, and give a receipt for the same; in default of receiving or accounting for the duty, the officer and the company to be accountable to the King.

Allowance for roughness.

Sect. 7.—When plate is sent in an unfinished state, a deduction of one sixth from the weight, and an allowance of one sixth of the duty to be made.

Account to be kept.

Sect. 8.—The said assay master, &c., to file the notes and enter the particulars thereof, and of the deductions, and keep a true account of the duties, and give a receipt (without stamp) for the duty; a duplicate of the receipt to be kept.

Books to be lodged with the company.

Sect 9.—The assay master, within one month after the 29th September, the 25th December, the 25th March, and the 24th June in every year, to return to the company and lodge with them all the books kept by him, containing the accounts of the particulars aforesaid, and of the duties received, and the duplicates of receipts, the said books to be open for the inspection of the Commissioners of Inland Excise and Taxes, or of any person authorized by them.

Payment of duties in Dublin.

Sect. 10.—The assay master every week to pay to the company all sums received by him on account of the duties; the company to pay the moneys within two days to the collector of excise in the district of Dublin; and within two months after the respective days aforesaid, or at such other times after the expiration of the said two months as may be appointed by the said Commissioners, deliver to them or to any person appointed by them true copies of the accounts, and at the same time pay to the collector of excise for the district of Dublin the balance of the sums received.

In the country.

Sect. 11.—Every deputy assay master, or other officer in any part of Ire-

land, except Dublin, every week to pay to the collector of excise for the district, all sums received for duties, and within one month after the respective days aforesaid, in every year, or at such other times after the expiration of the said month, as may be appointed by the said collector, deliver to him all books of account and duplicate receipts.

Sect. 12.—The Commissioners to make an allowance out of the duties to the said company for their expenses, pains, and trouble, of one shilling in the pound, for all moneys received and duly accounted for. Allowance for receiving duties.

Sect. 13.—If any assay master, deputy assay master, or other officer, neglect to keep such books and accounts, or to give such receipts, or to return and lodge the said books or accounts in manner by this Act directed, or to receive the said duties, or to pay over the same; or if the company neglect to deliver the copies of the accounts, or to pay over the duties, such assay master, deputy, or other officer, and the clerk or accountant of the company respectively, to forfeit 100*l.* and double the amount of the duty received, or which ought to have been received. Penalty on assay master, &c., for neglect of duty.

Sect. 14.—No person working or trading in plate to sell or expose to sale, barter or exchange any plate unless it be silver wire, or such things, not exceeding four pennyweights, which are not capable of receiving a mark, until it be assayed and marked, upon pain of forfeiting 100*l.*; and all such plate found in the house, shop, room, or other place of any person, for the purpose of sale, not so assayed or marked to be forfeited, and may be seized by any officer of inland excise and taxes, or customs. Penalty for selling plate not marked.

Sect. 15.—No person to buy, take, or receive, in the way of purchase, barter, or exchange, any plate from any person working or trading in wrought gold or silver (except as aforesaid) not being assayed and marked, upon pain of forfeiting a sum equal to the value thereof, to be sued for and recovered by any person who shall discover the same. Penalty for buying plate not marked.

Sect. 16.—If any person forge any die for marking plate, or forge any mark upon plate, or metal gilt or plated over, or transpose any genuine mark, or sell plate, &c, with any forged or transposed mark thereon, or knowingly be possessed of any forged mark, he shall be guilty of felony and be transported for seven years; and if any person cut out of one piece of plate any mark, with intent to transpose the same, or that the same may be transposed, he shall forfeit 200*l.* Forging marks, &c.

NOTE.—The duties on plate in Ireland were transferred to the Commissioners of Stamps by the 6 Geo. IV. c. 118.

54 Geo. III. c. 92.

For securing the payment of stamp duties on probates and letters of administration, and on receipts for property obtained by legacy, or intestacy, in Ireland.

Sect. 2.—Every person who shall administer any part of the personal estate of any deceased person, without having proved the will, or taken out letters of administration within twelve calendar months after the death of such deceased person, shall forfeit 40*l.* British currency. Administering effects without proving the will, &c.

Sect. 3.—Every probate taken out by any executor after the will has been proved, and probate duly obtained by another executor to be valid without any stamp. No stamp for second probate.

Sect. 4.—Every executor and administrator of any deceased person, who shall have left a personal property of the value of 200*l.* or upwards, and every person who shall administer or enter upon the possession or management of any part of the personal estate of any such deceased person, before disposing of or distributing any part, and within six calendar months, to exhibit upon Executors, &c., to exhibit an inventory.

oath in the Ecclesiastical Court an inventory or statement of such estate and effects, so far as they have been recovered, or are known to be existing; and also of all debts due, and in like manner, from time to time, of all subsequently discovered effects and debts; and for any neglect or omission to forfeit 40*l.*

No legacy shall be paid without the proper receipt, &c.

Sect. 5.—Every person who shall administer the personal estate of any person deceased, and shall retain, whether for his or her own use or otherwise, any legacy, or any part of the residue, shall, in a reasonable time after the death of the deceased, be accountable for any duty payable on any receipt or discharge for any such legacy or residue; and if he pay any legacy or residue without a receipt he may deduct the duty, the amount of such duty to be a debt from him to His Majesty; and if he pay any legacy or residue, without obtaining a receipt, or without deducting the duty, the amount of such duty to be a debt to His Majesty, as well from the person so administering as from the person to whom the same shall have been so paid.

What are deemed legacies.

Sect. 6.—Any gift by any will or testamentary instrument of any person, which by virtue of such will or testamentary instrument shall have effect, or be satisfied out of the personal estate of such person so dying, or out of any which he shall have power to dispose of, as he shall think fit, or which shall be charged upon or given out of any real or personal estate, or moneys arising from the sale of any real estate directed to be sold by any will or testamentary instrument, shall be deemed and taken to be a legacy within the intent and meaning of this Act, and of all Acts whereby any stamp duty is or shall be imposed, whether given by way of annuity, or in any other form, [and whether charged only on such personal estate, or charged also on the real estate of the testator or testatrix, except so far as the same shall be paid or satisfied out of such real estate, in a due execution of the will or testamentary instrument by which the same shall be given,] (*a*) and every gift which shall have effect as a *donatio mortis causâ*, shall also be deemed a legacy within the intent and meaning of this Act, and of all other such Acts as aforesaid. See 8 & 9 Vict. c. 76, *ante*.

Court of Exchequer may grant a rule against executors.

Sect. 7.—Where any executor or administrator, or other person taking the burthen of the execution of the will, or other testamentary instrument, or the administration of the personal estate of any person deceased, or any trustee, or any other person to whom any real estate shall be devised to be sold, or who shall be entitled to any real estate subject to any legacy, shall not have paid any stamp duties payable by law on any receipts for any legacy or residue, within a proper and reasonable time, the Court of Exchequer in Ireland, may, upon application made on behalf of the Commissioners, upon such affidavit as may appear to be sufficient, grant a rule, requiring such person to show cause why he should not deliver to the Commissioners, an account upon oath of all the legacies and property respectively paid or to be paid or administered by him, or given or bequeathed to such trustee or other person entitled to any real estate, subject to any such legacy, as the case may be, and why the duties have not been paid, or should not be forthwith paid according to law, and to make any such rule of Court absolute if necessary for enforcing payment of the duties, together with the costs.

Forms for receipts to be provided.

Sect. 8.—The Commissioners may provide paper adapted for receipts, and cause to be printed thereon the form in the schedule annexed; and persons requiring such receipts may use the same or a like form provided by themselves.

Sect. 9.—Annuities to be valued and the duties calculated according to the

(*a*) The words within brackets are altogether out of place here, they were inserted by mistake, having been inadvertently copied from the parallel clause in the Act relating to legacy duties on personal estate in Great Britain (36 Geo. III. c. 52, s. 7), and the clause is to be read without them. See *Cleland* v. *Ker*, page 710, *ante*.

Tables annexed. This clause is the same as section 8 of the 36 Geo. III. c. 52, relating to legacies in Great Britain. See p. 631, *ante*. By 5 & 6 Vict. c. 82, s. 38, the duties in Ireland are to be calculated according to the same Tables as in Great Britain.

Sect. 10.—As to calculating the value of annuities payable out of legacies. Same as 36 Geo. III. c. 52, s. 9.—*Ante*, p. 632.

Sect. 11.—The duty on legacies given to purchase annuities to be calculated on the sums necessary to purchase them.—*Ib.* s. 10, page 632.

Sect. 12.—Where the value can only be ascertained on the application of the fund duty to be charged on the money applied.—*Ib.* s. 11, page 632.

Sect. 13.—How the duty is to be calculated on legacies to be enjoyed in succession and on partial interests.—*Ib.* s. 12, page 632.

Sect. 14.—By whom such duty is to be paid.—*Ib.* s. 13, page 632.

Sect. 15.—Duty not to be paid on articles not yielding income enjoyed in succession until capable of being disposed of.—*Ib.* s. 14, page 633.

Sect. 16.—Duty on legacies in succession to be paid whether taken under or in default of will.—*Ib.* s. 15, page 633.

Sect. 17.—Duty on legacies in joint-tenancy to be paid in proportion to the respective interests of the parties.—*Ib.* s. 16, page 633; with a proviso for the allowance of the duty already paid, on becoming entitled by survivorship or severance to a larger interest.

Sect. 18.—Where legacies are subject to contingencies the duty is to be charged as on absolute bequests.—*Ib.* s. 17, page 633.

Sect. 19.—Legacies subject to power of appointment, how to be charged.—*Ib.* s. 18, page 633.

Sect. 20.—Personal estate directed to be applied in purchase of real estate.—*Ib.* s. 19, page 634.

Sect. 21.—Where any real estate shall by any will be directed to be sold charged with any legacy, the person entitled to sell the same, or bound to pay the legacy, and, also, the person beneficially entitled to the legacy or to the residue of the purchase money shall be liable to pay the duties in the same manner in all respects, *mutatis mutandis*, as concerning the administration of personal estate hereinbefore provided.

Sect. 22.—Estates *pur autre vie* applicable by law in the same manner as personal estate shall be charged with duties as personal estate.

Sect. 23.—Money left to pay duty not to be chargeable.—*Ib.* s. 21, p. 634.

Sect. 24.—As to the mode of ascertaining the value of specific legacies or residue not reduced into money.—*Ib.* s. 22, page 634; with the exception that the appeal is to be to the "Commissioners of Appeals in revenue causes in Ireland," in lieu of the Commissioners of Land Tax in England.

Sect. 25.—Where legacies are compounded for, &c., the duty to be paid according to the amount or value taken in satisfaction.—*Ib.* s. 23, page 635.

Sect. 26.—Legatee to pay the costs of any suit instituted by him after a refusal to accept his legacy duty deducted, &c.—*Ib.* s. 24, page 635.

Sect. 27.—Court of Chancery to provide for payment of duties where suits instituted.—*Ib.* s. 25, page 635.

Sect. 28.—Executor, &c., may from time to time dispose of any part of any legacy or residue on payment of the duty thereon.—*Ib.* s. 26, page 635.

Sect. 29.—No legacy to be paid without taking a receipt.—*Ib.* s. 27, page 635.

Sect. 30.—Penalty for paying legacy without taking a receipt and getting it stamped 10*l. per cent.* on the value.—*Ib.* s. 28, page 636.

Sect. 31.—Receipts to be brought to be stamped.—*Ib.* s. 29, page 636; with the following material variance, *viz.*, three months to be allowed for stamping instead of 21 days; and receipts may be brought to be stamped at any time after the expiration of three months on payment of the duty and 10*l. per cent.* thereon. Power is also given to the Commissioners to remit the penalty where a receipt signed out of Ireland is brought within two years from the date.

But see 5 & 6 Vict. c. 82, s. 39, which is a repetition of this clause in the 36 Geo. III. c. 52, limiting the stamping to 21 days without penalty and to three months with the penalty; and allowing receipts signed out of the United Kingdom to be stamped without penalty if brought within 21 days after being received in the kingdom.

Sect. 32.—Parties giving information against other offenders to be indemnified.

Sects. 33 & 34.—As to payment of legacy or residue into the Court of Chancery in cases of infancy, absence, or doubt.—*Ib.* s. 32, page 637, and 37 Geo. III. c. 135, page 639.

Sect. 35.—Provision for compounding for the duties on application to the Court of Exchequer.—See 36 Geo. III. c. 52, s. 33, page 637.

Sect. 36.—If any legacy be refunded the duty to be repaid.—*Ib.* s. 34, page 638.

Sect. 37.—Executors retaining their legacies to transmit particulars to the Commissioners.—*Ib.* s. 35, page 638.

Sect. 38.—If administration made void, any duty improperly paid to be refunded.—*Ib.* s. 37, page 638.

Sect. 39.—Penalty for altering any receipt after it is signed with intent to defraud any person, 500*l.*—*Ib.* s. 39, page 638.

Sect. 40.—Indemnity against penalties heretofore incurred.

Registrars of Ecclesiastical Courts to give an account of wills, &c., when required.

Sect. 41.—The Commissioners of stamp duties, or any one or more of them, may require of every Registrar or other officer of any Ecclesiastical Court in Ireland having the custody or care of any wills, or of any entry or register of any administrations, an account of all such wills and letters of administration, together with an abstract of the particulars relating thereto, on payment of such fees as shall be agreed upon for the same; and in case of any dispute as to the fees to be paid, the said Commissioners, or any officer authorized by them may require, by notice in writing, the Registrar or other proper officer of any Ecclesiastical Court to produce any will, and all and every order and proceeding of or in the said Court relating to such will, to any person named, and who shall have free liberty to take an account and abstract thereof, and to make such extracts as he shall think proper therefrom; and if any such Registrar or other officer refuse or neglect to produce any such will, according to such notice, or to permit an account, abstract, or extract to be made, or shall deliver any false will, account, abstract, extract, order, or proceeding, he shall forfeit 40*l.*, to be recovered with costs of suit.

Penalty of 40*l.* on neglect.

Such accounts may be written on paper without stamp.

Sect. 42.—Provided, that every such account, abstract, or extract may be written on paper without stamps, and shall be kept for the use only of the Commissioners of Stamps for the time being and their officers employed in their business.

Penalties how to be recovered.

Sect. 43.—All penalties and forfeitures under this Act, for the recovery or application of which no special provision is made, shall be recovered and applied in such manner and under such rules, directions, powers and provisions as are contained in the 52 Geo. III. c. 126.

55 Geo. III. c. 19.

By this Act duties of excise in Ireland were imposed upon licences for (amongst other things) selling or making gold or silver plate, for exercising the trade or calling of a hawker, pedlar, or petty chapman; and for letting horses for hire; to be granted by the Commissioners of Inland Excise and Taxes, or their officers.

Contents of licences.

Sect. 6.—In every licence to be set forth the purpose of the licence, the

name and residence of the person to whom granted, the date of issuing, the time for which it is to be in force, and the house or place in which the business is to be carried on.

Sect. 7.—Every licence to continue in force until and upon the fifth day of January next after the date. Continuance of licence.

Sect. 9.—If any person deal in, make, sell, or keep for sale, or expose to sale any of the articles, or exercise or carry on any business, occupation, trade, or calling specified without having taken out such licence and having the same in force, to forfeit 50*l.* Exercising trade without licence.

Sect. 10.—Persons in partnership carrying on business in one house or shop only, not to be obliged to take out more than one licence; and no one licence to authorize any person to deal in any other than the house or place mentioned in the licence. Partners, &c.

Sect. 15.—Every person requiring any licence shall deliver to the Commissioners, or to the person authorized to grant such licences, a note in writing, setting forth his name and place of abode, specifying the place, if any, where he is desirous to be licensed. Note of party's name, &c., to be delivered.

Sect. 16.—Every person who shall deal in, or manufacture any article, or exercise any business for which a licence is required to cause to be painted on a board his name at full length, and the particular articles, trade, or business he is licensed to sell, manufacture or exercise, and affix the same outside his house; and so to keep the same, under a penalty of 10*l.* Parties licensed to put up boards importing their trade.

Sect. 17.—If any person shall not be licensed on whose house any such board shall be affixed he shall forfeit 10*l.*

Sect. 18.—Persons may remove from licensed places to others in the same city or town, with leave of the Commissioners. Persons removing.

Sect. 20.—In proceedings for not having a licence, the proof that a licence was obtained to lie on the party against whom the complaint is made. Proof of licence.

Sect. 21.—On the trial of any action, information, indictment, suit or prosecution relating to any matter or thing concerning any such licence an attested copy signed by the collector or other officer of the entry of such licence, in any of the books, to be admitted as evidence that such licence was granted.

Sect. 23.—If any person deal in, make, sell, or keep or expose to sale any such articles, or exercise or carry on any trade, occupation, or calling, for which any licence is required, he shall forfeit 10*l.*, unless a licence be produced to any officer of excise or customs within a reasonable time after demand. Refusing to produce licence on demand.

Sect. 25.—Every licence shall be renewed annually ten days at least before the expiration thereof; and if any person having had a licence and omitted to renew the same within the time aforesaid continue to carry on the business he shall forfeit 10*l.* Licences to be renewed annually.

Sects. 76 to 83, relate to hawkers and pedlars. Hawkers.

Sect. 84.—Any justice of the peace may hear and determine any information or complaint for the recovery of any penalty not exceeding 20*l.* British, and within three months after the offence committed summon the party accused, and the witnesses, and issue out a warrant for levying the penalty, and for want of sufficient distress commit such offender to gaol until such penalty shall be paid; and any person aggrieved may appeal to the general quarter sessions, and if the conviction be affirmed the sessions may levy the penalty and costs. Penalties exceeding 20*l.* to be recovered in the superior Courts, &c. Recovering penalties not exceeding 20*l.* before magistrates.

Sect. 85.—If any person summoned as a witness neglect or refuse to appear, or to give testimony, to forfeit 10*l.*, and in case of non-payment the justice to levy the same, and for want of effects commit the party until payment. Witnesses not appearing, &c.

Sect. 88.—Any justice of the peace neglecting or refusing in any instance to carry this act into execution, upon a proper application, to forfeit 100*l.* Justice refusing to act.

Sect. 89.—Conviction not to be removed, &c. Certiorari.

Informer may be witness.

Sect. 91.—The informer or prosecutor shall in all cases be a competent witness.

Application of penalties.

Sect. 92.—Penalties of or under 10*l.* to be applied, deducting the expenses, one half to the informer, the other to the churchwardens of the parish wherein the offence was committed.

Commissioners may abate fines.

Sect. 93.—The Commissioners of inland excise and taxes in Ireland, or any three of them, may mitigate any penalty imposed under the authority of any justice.

Penalties shall be paid in British currency. King's share to be paid over to collector.

Sect. 95.—Penalties to be paid in British currency, and such part as shal be payable to His Majesty to be within one calendar month paid by the justice or person by whom the same shall have been levied or received, to the collector of excise of the district; and for any neglect so to pay over the same to forfeit a sum equal to double the sum so omitted to be paid over.

Copies of conviction to be transmitted to Commissioners.

Sect. 101.—Every clerk of the peace in Ireland shall within one calendar month after any such conviction shall have been returned to his office, furnish to the collector of excise or other officer in charge of the district, a copy of such conviction signed by himself, for which he shall receive one shilling; and every such collector or other officer shall forthwith transmit such copy to the said Commissioners of excise and taxes; and if any such clerk of the peace or collector, or other officer shall neglect or omit to do so respectively he shall forfeit 10*l.*

55 Geo. III. c. 100.

To provide for the collection and management of stamp duties payable on bills of exchange, promissory notes, receipts, and game certificates, in Ireland.

Penalty for post-dating checks, &c.

Sect. 1.—If any person issue, or cause to be issued any bill, draft, or order for the payment of money to bearer on demand, drawn upon any banker, which shall be dated on any day subsequent to the day on which it shall be issued, or which shall not truly specify the place where it is issued, or which shall not be exempt from stamp duty, unless it be duly stamped as a bill of exchange according to law, he shall forfeit 100*l.*; and if any person knowingly receive any such bill, draft, or order, in payment of or as a security for the sum therein mentioned, he shall forfeit 20*l.*; and if any banker upon whom the same shall be drawn pay or cause or permit to be paid the sum therein expressed, or any part thereof, knowing the same to be so post dated, or knowing that the place is not truly specified, the same not being stamped according to law, he shall forfeit 100*l.*, and shall not be allowed the money so paid or any part thereof in account.

Acceptances of bank post bills, how written.

Sect. 2.—The acceptance of any bank post bill to be written on and across the face of such bill and the original words or figures thereof, and no bank post bill to be re-issued.

Bankers to register their firms at the Stamp Office.

Sect. 3.—No banker or person (except the Bank of Ireland), at any time between the 25th day of March in any year and the 25th day of March following, shall be allowed to issue any promissory note for money payable to bearer on demand, liable to a stamp duty, and allowed to be re-issued, unless an entry and registry of the firm of the bank to which he shall belong, and of the names of all the partners, be previously made and entered for such year at the Stamp Office in Dublin; and every such entry shall specify every town and place where any such promissory notes shall be issued or made payable by any such person, or by any agent; and all persons so registered to be for such year considered as bankers within the meaning of any Act in force in Ireland respecting bankers, unless the contrary shall be declared in such Act.

Sect. 4.—Whenever any such entry and registry is made, a certificate thereof to be granted by the said Commissioners of Stamps, or some person authorized for that purpose to the person registered, duly stamped with the stamp required for such certificates; a separate certificate to be granted in respect of every town and place where any such note shall be issued or made payable by any such person or by any agent, except that one certificate shall be sufficient for all the places where any such person shall have established a branch, or employed an agent for issuing notes previously to the commencement of this Act; every such town or place to be notified to the Stamp Office, and specified in the certificate; an affidavit of the fact to be transmitted to the Stamp Office at the time of applying to make entry; the certificate to specify the name and place of abode of the person so registered, and also the names of the towns or places where, and of the bank, firm, or title under which such notes are to be issued; and where granted to persons in partnership, to specify the names and places of abode of all the persons concerned in the partnership, whether all their names shall appear on the notes to be issued by them or not, and in default thereof such certificate to be void; every such certificate to be dated on the day on which it is granted, and to continue in force from the day of the date, until the 25th day of March following, both inclusive.

Certificate of registry to be granted on stamps.

Sect. 5.—If any person (except the Bank of Ireland) issue any such promissory notes re-issuable as aforesaid without having made or caused to be made such entry and registry as aforesaid for the year, and obtained a certificate, to forfeit 500*l.* British currency.

Penalty on issuing notes without certificate.

Sect. 6.—Bankers licensed under former laws may change their licences for certificates under this Act.

Sect. 7.—Persons intending to issue any such notes may apply at any time within ten days previous to the 25th day of March for the purpose of making such registry and entry, and obtaining such certificate for any year commencing on such 25th day of March.

Registry may be made ten days before the 25th March.

Sect. 8.—Any such registered person who shall have made and issued any notes for the payment to the bearer on demand of any sum not exceeding 100*l.* duly stamped, may after payment and within three years from the date, re-issue any such notes without further duty; and shall not re-issue any note, bill, draft, or order, save as aforesaid; and if any person issue or cause to be issued for the first time any note for payment to the bearer on demand, bearing date subsequent to the day when the same shall be actually issued, he shall forfeit 50*l.*

Promissory notes may be re-issued as herein.

Sect. 9.—All notes allowed to be re-issued shall upon payment at any time after the expiration of three years, and all post bills, notes, bills, drafts, or orders for money not allowed to be re-issued, shall, upon payment, be deemed to be wholly discharged, and shall be no longer negotiable or available, but shall be forthwith cancelled; and if any person shall re-issue any note at any time after the expiration of the term allowed for that purpose, or shall re-issue any post bill, or any note, bill, draft, or order not allowed to be re-issued at any time after payment; or if any person paying any such post bill, note, bill, draft, or order, refuse or neglect to cancel the same, the person so offending shall forfeit 50*l.*; and for bills, &c., re-issued contrary to this Act, a further duty shall be payable, and be recoverable as a debt to His Majesty by summary application to the Court of Exchequer, in the same manner as any unpaid stamp duty may be sued for; and if any person shall receive or take any such post bill, &c., in payment, or as a security, knowing the same to have been re-issued contrary to this Act, such person shall forfeit 20*l.*

Bills and notes not re-issuable to be cancelled on payment.

Penalty on taking notes re-issued contrary to law, 20*l.*

Sect. 10.—All notes and bills drawn on any banker on paper stamped with a stamp of less amount than according to law shall be absolutely null and void.

Notes with insufficient stamps.

Sect. 11.—No receipt to be received in evidence as a discharge, or as proof

Receipts for

sums not specified.

of payment of any sum not expressed unless stamped for a receipt in full of all demands.

Duty on notes and receipts, by whom to be paid.

Sect. 12.—The duties on bills, notes, drafts, orders, or receipts, shall, unless otherwise expressly provided, be paid by the person giving the same: Provided, that if any person on paying money, demand a receipt in full of all demands, he shall be liable to pay to the person giving the same the difference (if any) between the duty in respect of the sum paid, and a receipt in full.

Receipt stamps may be tendered as part of the money.

Sect. 13.—Any person paying money may tender as part a receipt stamp, and require a receipt thereon, or on some other piece of paper duly stamped, and thereupon the said stamp so tendered shall be received in the payment, and shall be a good tender.

Refusing to give receipt.

Sect. 14.—Every person receiving payment, either by money or by any bill, draft, check, note, or other security for money, who shall, upon demand, refuse to give a receipt for the same, shall forfeit 20*l.*

Making, &c., bills or notes not duly stamped, 50*l.*

Sect. 15.—If any person make, write, sign, or issue, or cause to be made, written, signed, or issued, or accept or pay, or cause or permit to be accepted or paid any receipt, bill, draft, or order, or promissory note for the payment of money liable to any stamp duty without the same being duly stamped, he shall forfeit 50*l.*

Receipts to specify the sum paid or be stamped as receipts in full.

Sect. 16.—The whole sum for which any receipt shall be given shall be expressed, unless it be stamped for a receipt in full of all demands; and if any person give any receipt in which a less sum shall be expressed than the sum received, with an intent to evade any of the duties, or shall divide the sum paid into divers receipts, or shall by any general acknowledgment or use of the words "settled," "paid," "by cash" or "entered," or by such like or any other word, letters, or marks intended to answer the purposes of a receipt, or to denote that the money has been paid, or shall by any other means endeavour to evade any of the duties on receipts, or be guilty of or concerned in any fraud or contrivance whatever to evade any of the said duties, he shall forfeit 20*l.*

Penalty on clerk's signing receipts unstamped.

Sect. 17.—If any person in the employment of another shall for the use of his employer, whether in the name of such employer, or in his own, or any other name, give any receipt, &c., [as in the last clause,] he shall forfeit 20*l.*; and such act shall, as to all pecuniary penalties to which such matter shall be subject, be considered as the act of the person in whose employment the person so offending shall be; and the clerk or other person so committing any of the offences hereinbefore mentioned, upon being convicted thereof, shall be deemed guilty of a misdemeanor.

NOTE.—The penalties by this Act imposed, so far as the same relate to receipts, are by the 9 Geo. IV. c. 40, s. 19, reduced to 10*l.*; and so much of the Act as declares that any person committing any offence relating to receipts shall be guilty of a misdemeanor is repealed, and a penalty of 10*l.* is imposed for such offence in lieu.

Specific stamps for bank notes.

Sect. 18.—Distinct stamps shall be kept for denoting the duties on any bank notes or bank post bills of the Bank of Ireland, or of any private bank or banker.

Composition for stamps on notes of Bank of Ireland.

Sect. 19.—All bank notes and bank post bills issued by the Bank of Ireland shall be exempt from duties for one year; provided the bank pay into the Treasury such sum of money as shall have been from time to time agreed upon, as a compensation in lieu of duties for the year.

Spoiled note stamps.

Sect. 20.—The stamps on notes, signed by any banker duly registered, if the same remain in a book and be part of the leaves thereof, may be allowed as spoiled stamps.

55 Geo. III. c. 101.

To regulate the collection of stamp duties on matters in respect of which licences may be granted by the Commissioners of Stamps in Ireland.

NOTE.—The provisions contained in this Act relating to sea insurances are here omitted, having been repealed by the 5 & 6 Vict. c. 82, s. 21.

Commissioners may grant all licences subject to stamp duties.

Sect. 1.—The Commissioners may grant any licence on which any stamp duty is imposed to any person who shall require the same in writing, and be entitled to receive the same, without fee or reward, on payment of the duty, and in all such licences shall be contained the purpose of such licence, the name and residence of such person, the date of issuing, the time for which the same shall be in force, and the house or place in which the business is to be carried on, so far as the nature of the business shall allow it to be confined to any place capable of being specified or described.

Annual continuance of such licences.

Sect. 2.—Every licence shall have force from the day of granting the same, or from such day subsequent thereto as shall be mentioned until the 25th day of March next following, and no longer, except as after mentioned; but if any licence be granted to two or more, and any die, such licence shall continue in force for the survivors.

Penalty on unlicensed persons exercising trades.

Sect. 3.—No person shall use, exercise, or follow any trade, &c., for the using or exercising whereof a licence shall be granted, without having previously taken out such licence; and every person offending herein shall forfeit 40*l.*; and in any proceeding for recovery of the penalty, the common reputation of the alleged fact of following such trade, &c., shall be evidence against the defendant unless he swear that he did not so follow the same.

Proof of licence on the party.

Sect. 4.—And in any such proceeding the proof that such person has obtained such licence shall be on him.

Licences to extend only to houses mentioned.

Sect. 5.—If any licence be granted to any person to sell any matter or thing, or to carry on any trade, &c., in any particular house or district, such person shall, as to every other house, place, or district, be considered as unlicensed, save as otherwise provided.

Cases of removal.

Sect. 6.—Provided, that if such person be minded to remove from the place mentioned and carry on the business in any other house in the same city, town, or townland, the Commissioners or their officer shall indorse the same on the said licence, and thenceforth such licence shall be good according to the indorsement, as if such house so indorsed had been mentioned in the body of such licence.

Issuing licences on unstamped paper.

Sect. 7.—If any person authorized to grant any licence on which a stamp duty is imposed, grant or issue any such licence on paper not stamped as by law required, or in any other manner or form than that required by law, or directed by the Commissioners, he shall forfeit 40*l.* and be for ever disabled from holding his office.

Commissioners may license persons to deal in stamps.

Sect. 8.—The said Commissioners, in their discretion, may grant a licence to any person (not being a distributor of stamps, appointed by the said Commissioners) to deal in and retail stamps: Provided, that every such person shall enter into a bond to his Majesty, with two sufficient sureties, in the penalty of 200*l.*, conditioned not to sell or offer to sale, or have or keep in his possession any forged or counterfeit stamp; and not to purchase any stamps save only at the office of the said Commissioners in Dublin, or from some distributor: Provided also, that no such licence shall be granted to any person in any place in Ireland (except within the district of Dublin metropolis) where a distributor of stamps shall reside and act.

NOTE.—No duty is now payable on any such licence.

Licences may be revoked.

Sect. 9.—The Commissioners may by notice in writing at any time revoke any such licence, or any licence for selling stamps heretofore granted or hereafter to be granted.

Allowing for stamps in the possession of dealers dying, or whose licences are revoked.

Sect. 10.—Provided always, that if any person licensed shall at the time of his death, or at the expiration or revocation of his licence, have in his possession any stamps, and they be sent within one calendar month next to the Stamp Office in Dublin, the Commissioners shall pay for the same the full value thereof, deducting such per centage, if any, as shall have been allowed on purchasing the same, and such stamps shall be cancelled: Provided, that some person shall make an affidavit before a Commissioner or Justice that such stamps were actually in the possession of the person so dying, or having had such licence for the purpose of sale at the time when he died, or the licence expired or was revoked; and proof to the satisfaction of the said Commissioners, that they were purchased at the Stamp Office in Dublin, or from a distributor by the licensed person.

Penalty for selling stamps without licence.

Sect. 11.—No person other than such distributor or a sub-distributor shall sell any stamps without a licence for that purpose; and if any such other person shall without having obtained such licence, or after the same shall have expired or been revoked, utter, vend, or sell any stamp, he shall forfeit 20*l.*; and if it shall appear that any of the stamps sold were forged, although not so alleged in the information or pleading, the penalty shall be doubled; and the special matter shall be stated in the judgment, and the jury shall be required to say whether any of the stamps were forged, or not: Provided, that nothing shall exempt any person selling forged stamps from the consequences of selling the same, knowing the same to be forged.

Commissioners may grant warrant to search for forged stamps.

Sect. 12.—The Commissioners may by warrant authorize any person, with the assistance of a magistrate or peace officer, in the daytime, to enter into the house of any person licensed to sell stamps; and on demand and notice, to break open any inner door, and examine all such stamps as shall be in the house, in order to see whether any of them be forged; and such person so authorized may, with the assistance of a magistrate or peace officer, enter and break open the doors accordingly; and in case the stamps, or any of them, shall appear to be forged, seize and carry away the same. See also 56 Geo. III. c. 56, s. 21.

Licences for printing presses.

Sect. 13.—No person to keep any printing press, or types, without a licence from the Commissioners, who are to grant such licence to such persons as shall apply for the same, and who have performed the requisites by any Acts necessary to be performed; such licence to state the house where such press or types are to be used; any person keeping any such press or types without such licence, or in any other than the house mentioned in such licence, to forfeit such press and types, and 40*l.*

Penalty.

Licences for insurances.

Sect. 14.—The Commissioners annually to grant a licence for insuring houses, furniture, goods, wares, merchandise or other property from loss by fire, and for effecting insurances on lives, or on events or contingencies upon or relating to lives, which licence shall set forth the name or description of the body or person taking out the same, and the house where any such business is principally carried on.

To companies.

Sect. 15.—Where such business of insurance is carried on by a company consisting of a greater number than four, the licence shall be granted for and on behalf of the whole to such two or more, or if the company be a British company, then to such agent in Ireland as shall be named; the licence to continue in force for the benefit of such company until the expiration thereof, notwithstanding the deaths or withdrawal of the persons to whom it is granted.

None but licensed persons to insure.

Sect. 16.—No person or body to insure or open or keep any office for insuring property from loss by fire, or insurances on lives, or on events or contingencies relating to lives, without an annual licence.

Penalty.

Sect. 17.—For insuring or keeping an office for insuring without a licence;

or in any house or place not specified, or not subordinate to that specified kept by an agent, to forfeit 40*l.* a day and double the premiums received.

Sect. 18.—If any person act as agent in insuring for any person or body not licensed, to forfeit 40*l.* Agents.

Sect. 19.—Insurances effected by persons in Ireland as agents of the London Assurance or Royal Exchange Corporations, or any companies in Great Britain, to be subject only to the duties payable in Ireland, although the policies be under the Common Seal of the said corporations or companies, and be completed in the whole or in part previous to their being sent to Ireland. Insurances for British companies.

Sect. 20.—All such insurances for which subscriptions shall be received or policies or receipts delivered out, or respecting which any other matter or thing shall be done in Ireland, by any person who shall act for any body politic or corporate in Great Britain, shall be liable to all duties payable in Ireland; and all the rules, regulations, restrictions, penalties, &c., contained in any Act in force in Ireland relating to insurances, to be applied in such cases. Insurances to be liable to Irish duty and regulations.

Sect. 21.—The Courts in Great Britain to take judicial notice of the stamps used in Dublin for stamping any such insurance; and no such insurance to be pleaded, or given, or received in evidence, or admitted to be good or available in law or equity in any Court in Great Britain, unless duly stamped accordingly. Judicial notice of stamps.

Sect. 22.—Persons and bodies licensed to give security with sureties to be approved of by the said Commissioners by bond, in such sums as the Commissioners think reasonable, having respect to the probable amount of the duty for half a year, with condition faithfully to make out, sign, and deliver an account of, and pay all moneys received for duties, and to observe and perform all the directions, matters, and things by law required. Bond by persons licensed to insure.

Sect. 23.—Such persons and bodies to demand and receive for his Majesty the duty payable on any insurance and give a receipt for the same, expressing the period for which the same was paid, and in all cases to be accountable for the duty as if received. Duty to be received.

Sect. 25.—Such persons and bodies to keep true accounts of the number of every policy issued, granted, or continued; as also of the name of the person insuring, and the place of his abode, the sum insured, and the time for which it is insured, and also the day of the month and year, upon pain of forfeiting, for not keeping accounts, or for making any false entry, or omitting any entry, 500*l.*; such accounts to be open for the inspection of any person authorized by one or more of the Commissioners; and if any person do not on demand produce the same without fee or reward, he shall forfeit 20*l.* Insurance corporations, &c., shall keep accounts of insurance.

Sect. 26.—Such persons and bodies within two months after the 24th June, the 29th September, the 25th December, and the 25th March in each and every year; and also at such other times as they shall by fourteen days' notice be required by the Commissioners, deliver true copies of such accounts for the quarter completed next before such day of delivery or notice, and at the same time pay all such sums due on such accounts; (that is to say,) if the house named in the licence be in the county, or county of the city of Dublin, the accounts to be delivered at the Stamp Office in Dublin, and payment to be made to the Receiver General; if in any other part of Ireland, then to the distributor of the district, upon pain of forfeiting for every default in not delivering such copies, 40*l.*, and in not paying the money, double the amount due. Accounts to be delivered and duty paid quarterly.

Sect. 27.—One shilling in the pound to be allowed for receiving the duties and making out the accounts. Allowance.

Sect. 28.—Every deed, instrument, note, or memorandum, letter, muniment or writing, for payment of money, or for making any valuable compensation for, or upon any loss by fire, or on the decease of any person, or on the fall of any life, or on any event or contingency relating to any life, to be deemed a policy of insurance. Policy of insurance defined.

Licences to notaries public.

Sect. 29.—The Commissioners may grant licence to any person to act as a public notary, and no person to act as a notary without such licence, and any person who shall act as a public notary without such licence shall forfeit 40*l.*: Provided, that such licence shall not authorize any person to act as such notary who shall not be duly authorized so to do.

Sect. 30, relating to the delivery by notaries of accounts of bills and notes noted for non-acceptance or non-payment;—Repealed by 7 Vict. c. 21, s. 9.

56 Geo. III. c. 56.

To repeal the several stamp duties in Ireland, and also several Acts for the collection and management of the said duties, and to grant new stamp duties in lieu thereof; and to make more effectual regulations for collecting and managing the said duties.

Sects. 1 & 2.—The existing stamp duties in Ireland, together with several of the Acts relating thereto repealed, and other duties granted.

Exemptions continued.

Sect. 3.—Provided, that where any bond, receipt, deed, or instrument of any kind is expressly exempted from stamp duty, by any Act in force and not expressly repealed, the same to remain exempted.

Sect. 4.—The duties to be under the Commissioners of Stamps in Ireland, and be deemed stamp duties.

Duties to be paid in British currency, except the sum is under 6*d.* or between 6*d.* and 1*s.*

Sect. 5.—The duties and allowances, and all stamp duties from time to time payable in Ireland, where not otherwise provided, to be paid in British currency, except those under sixpence, or between sixpence and one shilling, which are to be paid in Irish currency: Provided, that where any duties or allowances are to be ascertained by the amount of any sum referred to, such amount is to be computed in Irish currency.

Office to be kept in Dublin.

Sect. 15.—The Commissioners to keep their office in some convenient place in the county of the city of Dublin; and none of the duties to be paid to the Commissioners.

Commissioners empowered to administer oaths.

Sect. 16.—The Commissioners, or any of them, may administer oaths and affirmations, and take affidavits and affirmations, in all cases where they shall think necessary for carrying into effect this Act, or any matter or thing relating thereto, or to the management or collection of any of the stamp duties.

Licences may be revoked.

Sect. 17.—The Commissioners may, by notice in writing at any time, revoke any licence which they are empowered to grant.

Premises of distributors, &c., may be entered and stamps taken away.

Sect. 21.—Any person authorized by the Commissioners, or any of them under hand and seal, and with the assistance of a magistrate or peace officer, may enter in the daytime the house of any distributor or sub-distributor, or of any person having a licence to sell stamps, or having had such licence in force at any time within six calendar months; and if on demand and notice the door of the house or any inner door shall not be opened, then with the assistance and in the presence of such magistrate or officer break open the same, and take into his possession all stamps found in the house, custody, or possession of such person; and all magistrates and peace officers are required to aid and assist.

Acknowledgment to be given for stamps seized.

Sect. 22.—Any person who shall execute any warrant in the house of any person licensed, shall give, if required, an acknowledgment for the stamps seized, and shall permit any person to inspect and mark the same as he shall think proper; and such person shall be entitled to receive from the distributor of the district the value of the stamps found to be genuine, and of the paper, &c., according to the rates at which the same shall be sold by such distributor.

The stamps kept at the

Sect. 28.—The stamps for denoting the duties kept or used at the Stamp Office in Dublin shall be the only lawful stamps for stamping all vellum, &c.,

on which any stamp duty shall be payable, and cards or dice; and if there be no stamp denoting precisely any duty payable, the Commissioners may direct two or more stamps to be used for denoting such duty, or provide new stamps, and may direct that such devices shall be used as may express the duty either directly in words and figures, or by reference or per centage, or in any other manner.

Stamp Office to be alone lawful.

Sect. 29.—The devices or marks may be altered from time to time and others used in lieu, as his Majesty, or the Lord Lieutenant, or the Commissioners of Stamps think fit: Provided, that public notice be given in the Dublin Gazette, and some other public newspaper, a convenient time before.

Devices may be altered.

Sect. 30.—The Commissioners to cause particular stamps to be used when requisite, to denote the duties not only on articles for which particular stamps shall be required by any law, but also on such others as shall seem requisite, or as they shall be required by his Majesty, or by the Lord Lieutenant, or the Treasury; and all such articles which shall be issued or granted, made or written, after one month from the day on which public notice shall have been or shall be given in the Dublin Gazette that such particular stamps have been provided, and which shall be written without such stamps, or having any other stamps than those so provided, and also all other matters in respect whereof any particular or appropriated stamp shall be necessary, and which after such notice shall be written on vellum, &c., not marked with any of the said particular stamps, shall be of no other effect than if written on vellum, &c., not stamped; and all persons who shall so write any such article on any paper, &c., having any such improper stamp, shall incur such penalty as in case it had been written on paper, &c., not stamped.

Commissioners to provide particular stamps.

Writings not having same to be void.

Sect. 31.—When devices or marks are altered, persons who have any stamps which have been so altered, may within four months change the same at the Stamp Office in Dublin, or at any distributor's for new stamps, and the old stamps, and all things written thereon to be of no avail; and persons writing the same to incur the same penalties as for writing on unstamped paper.

When devices are altered old stamps may be changed for new.

Sect. 32.—Every person who shall write, or execute any matter or thing in respect whereof any stamp duty is payable upon any vellum, &c., not duly stamped, and every person who shall have avoided, neglected, or omitted to pay any duty in respect of any act, matter, or thing done or caused to be done by him, shall be accountable for such duty, which shall be a debt from him; and the Barons of the Exchequer, upon application on behalf of the Commissioners upon such affidavit as may appear sufficient, may grant a rule requiring such person to show cause why he should not deliver to the Commissioners an account upon oath of all such duties so due, and why the same should not be forthwith paid according to law, and to make any such rule absolute where it may appear to be proper and necessary for enforcing the payment of the duties, together with such costs as the said Court shall think proper.

Persons evading the duty to be still liable, and the Court of Exchequer may enforce payment.

Sect. 33.—All Courts and Judges in Ireland shall take judicial notice of the stamps kept or used as aforesaid, as and for the only true and lawful stamps for denoting the duties payable; and no record, deed, instrument, writing, or printing whatever shall be pleaded or given in evidence in any Court in Ireland, or admitted in any Court in Ireland to be good or available in law or equity, unless the vellum, &c., whereon the same is written or printed shall be duly stamped: Provided, that any instrument written on any stamp greater than the duty payable shall be considered duly stamped, except where such instrument shall be of a kind for which any other particular stamp shall have been provided.

No deed or writing to be given in evidence unless sufficiently stamped.

Sect. 34.—If it be alleged, or if any Judge shall have any reason to suspect that any stamp produced is forged, the Judge is required to make inquiry thereupon, and to receive such evidence on oath as shall be offered, or as it shall be within his power to obtain, and to determine whether such stamp is

Courts to determine where stamps are alleged to be forgeries.

genuine or forged, and such determination shall, as to the purposes of the trial or occasion, be final.

Commissioners may appoint persons to attend Courts.

Sect. 35.—The Commissioners may, as they see occasion, appoint persons to attend in any court or office; which person shall have full power and authority to inspect and examine the vellum, &c., upon which any matters or things shall have been written, and also the stamps thereupon, and also all other matters and things tending to secure the duties; and the Judges and others to whom it may appertain, at the request of the Commissioners, shall make such orders and do such other matters and things for the better securing of the said duties as shall be reasonably desired.

Prices to be fixed at which vellum, &c., shall be sold.

Sect. 36.—The Lord Lieutenant shall, as often as he shall think proper, set the prices at which stamped vellum, parchment, and paper shall be sold; and the said Commissioners shall stamp the prices upon every skin or piece of vellum, parchment, or paper sold; and take care that the several parts of Ireland shall be sufficiently furnished with stamped vellum, parchment, and paper, so that all persons may buy the same.

Forging stamps, &c., felony.

Sect. 37.—If any person in any part of the United Kingdom, or the dominions thereto belonging, forge any stamp to resemble a stamp kept or used at the Stamp Office in Dublin; or if any person shall have in his possession any stamp made to resemble any stamp so kept; or if any person shall mark on any vellum, &c., any device, &c., to resemble any device, &c., used, kept or made, marked or impressed at the Stamp Office in Dublin, or shall use, utter, vend, or sell, or shall have in his possession, with intent to use, &c., any vellum, &c., with any counterfeit device, mark, or impression thereon, knowing such device to be counterfeited; or if any officer, or other person, shall with intent to defraud his Majesty, mark, or be aiding in marking any stamp on any vellum, &c., not delivered to him by authority for the purpose; or if any person shall, with intent to defraud his Majesty, knowingly have in his possession any vellum, &c., so fraudently stamped; any such person so offending shall be adjudged a felon, and be transported for life.

Licensed persons having counterfeit stamps in their possession.

Sect. 38.—Whenever any forged stamps shall be found in the possession of any licensed person, he shall be deemed to have had the same with intent to use, utter, or vend the same unless the contrary be proved, and shall also be deemed to have known the same to be forged, and shall be liable to all penalties and punishments accordingly, unless he shall prove that such stamps were procured at the Stamp Office in Dublin, or from some distributor.

Houses may be searched for forged stamps.

Sect. 39.—On complaint upon oath of just cause of suspicion any justice may by warrant under his hand cause any dwelling-house, room, workshop, outhouse or other building, yard, garden, or other place to be searched for any counterfeit type, die, &c., or any vellum, &c., with any counterfeit stamp thereon.

Vellum, &c., to be stamped before engrossed.

Sect. 40.—All vellum, parchment, and paper before any matter in respect whereof any stamp duty is payable is written thereon to be stamped with the proper duty; and the Commissioners are required to stamp any quantities thereof on payment of the duties.

Where stamps may be added.

Sect. 42.—Where under the provision of any Act any stamps shall become inapplicable or insufficient for the purposes intended, the Commissioners may impress additional or other stamps on payment of the difference, if any.

Allowance of spoiled stamps where instrument not executed.

Sect. 43.—Upon proof on oath or affirmation before any of the said Commissioners, or any inferior officer by them in that behalf appointed, to the satisfaction of such Commissioner or officer, that any instrument written upon any stamp hath not been executed by any party or that the vellum, &c., hath not been used for any of the purposes intended, and that the party hath not nor any other person on his account, received, and that he will not receive any money or other consideration for the stamp, and that the said stamp is his property, and hath been paid for by him, and that he will be a loser to the amount unless he receive other stamps in lieu; and upon delivering such stamped vellum, and a like quantity to be stamped, the Commissioners shall

cause the same to be stamped with the duties on the vellum, &c., rendered unfit, or with any other duties required, on paying the difference (if any): Provided, that such vellum, &c., be brought within six calendar months next after written upon, if the same belong to any person resident in Dublin, or within ten miles of the castle; or within twelve calendar months if to persons resident elsewhere: Provided also, that the Commissioners shall not be required to impress any stamp then confined to paper having the water mark of the said Stamp Office.

Sect. 44.—For the allowance of stamps on executed instruments. Same as 53 Geo. III. c. 108, s. 11, in England. See page 570, *ante*. Where executed.

Sect. 45.—For the allowance of stamps used for bills and notes. Same as 53 Geo. III. c. 108, s. 14, in England. See page 571, *ante*. Bill and note stamps.

Sect. 46.—The said Commissioners may make regulations, and require affidavits or affirmations (to be made before them or their officer) of facts in regard to the allowance of stamps for preventing frauds. Regulations as to allowance.

Sect. 47.—If any person write any of the matters chargeable with duty (except a bill or note) before the paper, &c., is duly stamped, there shall be paid the remainder or the whole of the duty (as may be) and also 10*l.* within five years, or after such term 20*l.*; and the officer upon payment of such duty and penalty to give a receipt for same, and stamp the paper. Penalty payable on stamping deeds, &c.

The penalties now payable as in England. See 5 & 6 Vict. c. 82, s. 12.

Sect. 48.—If any person write any matter chargeable with stamp duty upon paper stamped with any forged stamps, any such person (other than the person who shall have written or caused to be written such matter knowing such stamp to be forged, or who shall have impressed any such stamp) may bring such paper to be stamped, paying the duty and 10*l.* within five years, or afterwards 20*l.*; if it appear that such paper was bought, with such stamps thereon, at the Stamp Office, or from any distributor or sub-distributor or person licensed, the Commissioners may order the same to be stamped without any duty or penalty. Instruments with forged stamps may be properly stamped.

Sect. 49.—When any instrument (except a bill or note) shall have been written on parchment, &c., not duly stamped, and it appear that the same hath happened by accident or inadvertency, or from urgent necessity or unavoidable circumstances, and without intention to defraud, if, within sixty days from the first execution thereof, it be brought to be stamped, and the duty be paid, the Commissioners may remit the penalty or any part thereof, and cause such instrument to be stamped, the parties to be exempt from all penalties. Within sixty days the Commissioners may remit the penalty on stamping.

Sect. 50.—The Commissioners may stamp any instrument executed out of Ireland upon payment of the duty, without any additional duty or penalty, within six calendar months from the first execution if executed in the United Kingdom, or within two years if executed out of the United Kingdom, proof being made as to the place of execution. Instruments executed out of Ireland.

Sect. 51.—The Commissioners may provide moulds or frames for making paper, so constructed as that the words "Stamp Office," either alone or with figures, shall be visible in the substance of such paper, and cause such paper to be made by such persons as shall be appointed by them. Frames for making paper.

Sect. 52.—If any person not authorized make or use, or assist in making or using, or knowingly have in his possession, without lawful excuse the proof whereof shall be on the person accused, any frame, mould, or instrument for making such paper; or make, or cause to be made, or knowingly aid or assist in making, or have in his possession any paper of the like kind, or by any art or contrivance cause to appear in any paper any device peculiar to that in the paper used by the said Commissioners, he shall be adjudged a felon, and be transported for life. Persons not authorized making or using such paper.

Sect. 53.—All matters in respect whereof any duties shall be payable shall be written in such manner (and if written before being stamped shall be so Writing to cover the stamps

stamped) that some part of the writing shall be on the stamp, and such writing shall be continued in the usual form of writing, so that no blank space shall be left whereby such stamps might be made applicable to any other instrument, upon pain that the person who shall so write or stamp any such matter or thing, contrary to the true intent hereof, shall forfeit 10*l.*

Receipts for salaries.

Sect. 54.—No public officer shall be entitled to credit in account for any sum paid to any public officer for any salary, profit, emolument, fee, reward, or pension, unless such payment be vouched by a receipt duly stamped, where a stamp shall be required by law.

Sect. 55.—Relating to cards and dice, repealed.

Persons not to engross, &c., instruments without stamps.

Law proceedings not to be filed without stamps.

Officers intrusted to write records, &c., defrauding the revenue.

Such records, &c., not written by known officers, to pay a certain sum besides the duty.

Sect. 56.—If any person write any instrument, writing, or thing for which the vellum, &c., ought to have a stamp, or shall utter, issue, accept, receive, or knowingly have in his possession, any such instrument, not duly stamped at the time of writing the same, or stamped with any stamp which shall have been previously used for any other purpose, he shall forfeit 20*l.*; and if any person file in any Court anything whatsoever, in respect whereof any stamp duty shall be then payable, and there shall not be any time expressly allowed by law for stamping the same after the filing thereof, and such thing shall not be duly stamped, such person, and every officer who shall receive the same, shall forfeit 20*l.*; and in case any person, who in respect of any office or employment is entitled or intrusted to write any record, entry, deed, instrument, or writing whatsoever, chargeable with a stamp duty, or to issue any process or to file any proceedings, or to do any act in the execution of his office with respect to anything chargeable with duty, shall be guilty of any fraud, practice, or neglect, by means whereof His Majesty may be defrauded by writing any such record, &c., upon vellum, &c., not duly stamped, or stamped with a stamp which he shall know to be counterfeited, or for a lower duty than by law payable, or by neglecting to do anything in the execution of his office, or by doing anything contrary to the duty of his office in relation to any stamp duty, such person shall forfeit 40*l.*; and if any record, &c., on which any such stamp shall be by law charged, shall, contrary to the true intent and meaning of this Act, be written by any person whatsoever, not being such known clerk or officer, upon vellum, &c., not stamped according to law, or stamped for a lower duty than is payable, there shall be due and paid for every such deed, instrument, or writing, over and above the stamp duty, 10*l.*; and no such entry, &c., shall be pleaded or given in evidence in any Court, or admitted in any Court, or by any person, to be good, useful, or available in law or in equity, until as well such stamp duty as the said sum of 10*l.* shall be first paid, and a receipt produced for the same under the hand of some officer appointed to receive the duties of stamps, nor until the vellum, &c., shall be stamped to denote the duty payable thereon. See 5 & 6 Vict. c. 82, s. 12.

Officers using counterfeit stamps.

Sect. 57.—Every officer in any Court or public office who shall usually act in person, and the known deputy of any officer who shall not usually so act, in whose office any matter or thing shall have been received, shall, as to the purposes of this Act, be deemed and taken to have received the same; and every person as aforesaid, who shall write, or cause to be written, any such record, &c., upon vellum, &c., stamped with any counterfeit stamp, shall be deemed to have known such stamp to be counterfeit, unless he prove that the same was bought at the Stamp Office, or of some distributor or sub-distributor, or person duly licensed.

Falsifying dates, erasing names, or taking off stamps.

Sect. 58.—If any person, for the purpose of evading any of the stamp duties, execute any stamped instrument without a date, or bearing date prior to such execution, or fraudulently erase any name, date, sum, or thing, or fraudulently cut, tear, or take off any stamp with intent to use such stamp for any other writing, he shall forfeit 40*l.*; and any instrument, wherein any of the said frauds shall have been committed, shall be deemed not to have been duly stamped: Provided, that if any instrument shall have been executed by any of the parties on the day it bears date, it may be executed afterwards

by the other parties if duly stamped at the time of such prior execution thereof.

Sect. 59.—Every person who shall apply to be sworn or admitted an advocate, proctor, attorney, solicitor, clerk, or other officer in any Court in respect of whose admission any stamp duty shall be payable; or a student in the King's Inns, or to the degree of a barrister in King's Inns, shall deliver to the proper officer a certificate of some person appointed by the Commissioners, stating that such person has paid such duty, and the amount; and the officer shall keep two books, in each of which the names of all persons who shall be admitted by him, with the amount of the duty, shall be written; and shall on the second Monday in January, April, July, and October, deliver at the Stamp Office in Dublin, if such admission shall take place in the county, or county of the city of Dublin; and if in any other part of Ireland then to the distributor of stamps, one of the books together with the certificates, and the distributor shall transmit the same to the Stamp Office in Dublin; and every such book shall be examined and stamped and returned to the officer of the Court. *For securing the duty on admissions of advocates, attorneys, &c.*

Sect. 60.—In the Court of Chancery the proper officer for keeping such books shall be the Registrar or his deputy. *In Chancery.*

Sect. 61.—Every person who shall be bound an apprentice to any attorney, proctor, or notary public, shall in like manner obtain a written certificate of having paid the duty on his indenture, to be lodged with the proper officer of the Court in which such indentures shall be enrolled, or one of the Courts to which the master shall belong, or in case of notaries, with the Registrar of the Court of Prerogative; the officer is to keep such certificate, so that the same may be produced and read before admission. *Apprentices to attorneys, &c., to obtain certificates.*

Sect. 62.—No person shall be capable of practising or acting as an advocate, proctor, attorney, solicitor, clerk, or other officer in any Court, nor admitted to the privilege of a student, or to act as a barrister, nor shall his admission be valid unless his name appear in the said books, and be duly stamped; and no such officer shall deliver the same book in two successive quarters, but one of the said books shall be delivered in January and in July, and the other in April and October. *Advocates, attorneys, &c., not to act unless their names be entered.*

Sect. 63.—Whenever any such book shall be returned from the Stamp Office, the proper officer shall forthwith enter therein the names of all persons admitted while such book was out of his possession; and if he shall neglect to deliver any such book, together with such certificates, or to make an entry of any admission, he shall forfeit 50*l.*; and if he wilfully deface or destroy any such book, or make any false entry, or, without authority, erase or alter any entry, he shall forfeit 500*l.* *Duty of officer in keeping such books.*

Sect. 64.—No attorney to practise in any Court of Record, in which attorneys are admitted, except those in which he shall have been admitted, on pain of being rendered incapable of practising in any Court; and every attorney who shall so practise shall be disabled from recovering the costs of any proceedings carried on by him. *Attorneys to practise only in the court in which admitted.*

Sect. 65.—Every person admitted, &c., as a solicitor or attorney, or as a proctor, agent, or procurator, in any Court in Dublin, or in any Ecclesiastical Court, or in any Court of Admiralty, or in any other Court holding plea, where the debt or damage doth amount to 40*s.*, shall annually, before he shall commence, carry on, or defend any proceeding whatsoever, deliver at the Stamp Office a note in writing, containing his name and place of residence, and stating whether he has been so admitted three years or not; and thereupon and upon payment of the duties, he shall be entitled to a certificate duly stamped, to denote the payment of the said duty. *To obtain annual certificates.*

Sect. 66.—Every such certificate shall bear date on the day on which the same shall be issued, and shall commence on and from the day of issuing, or the sixth day of January next, as the person obtaining the same shall desire, and shall cease and determine on the sixth day of January next after the day on which the same shall so commence. *Certificates to be in force till the 6th January.*

To be produced in Court and entered.

Sect. 67.—Certificate to be produced to the proper officer in every Court in which the person shall be admitted before he practises; such officer, upon the payment of one shilling, to enter in its order, alphabetically, the name of such person with his residence, and the time he has been admitted, the date of such certificate, and for what time the same is to be in force, in a book or roll, to which all persons shall have free access without fee.

No attorney, &c., to carry on any proceeding without a certificate.

Sect. 68.—If any person sue out any writ or process, or commence, prosecute, carry on, or defend any action or suit or any proceeding as an attorney or solicitor, proctor, agent, or procurator in any of the courts aforesaid, without having obtained such annual certificate which shall be then in force, or without having caused the matters therein stated to be entered as before is directed, or shall deliver in any false place of residence, or statement of his having been admitted, or of the time when he shall have been so admitted, he shall forfeit 100*l.*, and be incapable to maintain any action or suit, for the recovery of any fee, reward, or disbursement, on account of prosecuting, carrying on, or defending any action, suit, or proceeding.

Proof of attorney's acting in Court.

Sect. 69.—Every attorney, &c., in whose name any process shall be sued out, or proceeding carried on or defended, shall be deemed to have sued out such process, or carried on or defended such proceeding, unless set aside by the Court on examination and not by consent, as having been so sued out, &c., without his direction, privity, or permission.

No officer to suffer writ to be sued out without a certificate.

Sect. 70.—No officer shall suffer any process to be issued or any proceeding taken in his office in the name of any attorney, &c., unless he shall have obtained his certificate, and shall have caused the matters therein stated to be entered; and if any such officer shall offend herein he shall forfeit 20*l.*, although not himself personally concerned in the matter.

Sect. 71.—As to entering appearances for defendants.

Conveyances and deeds to be prepared only by certain persons.

Sect. 72.—Every person who shall, for or in expectation of any fee, gain, or reward, directly or indirectly draw or prepare any conveyance of or deed relating to any real or personal estate, or any proceedings in law or equity, other than serjeants at law and barristers, and also solicitors, attorneys, notaries, proctors, or procurators, having obtained certificates, and persons having taken out the certificates mentioned in the schedule to this Act, for drawing or preparing any of the said matters in expectation of any fee or reward, and other than persons solely employed to engross any deed, instrument, or other proceedings not drawn or prepared by themselves, and other than public officers drawing or preparing official instruments applicable to their offices and in the course of their duty, shall forfeit 50*l.*: Provided always, that nothing herein contained shall extend to prevent any person preparing any will or other testamentary paper, or any agreement not under seal, or any letter of attorney.

But not to extend to wills, &c.

Duty on office copies of enrolments.

Sect. 78.—The stamp duties payable for any office copy of the enrolment of any matter in the Rolls Office shall be paid in manner after mentioned; that is to say, such copy shall be written on paper not stamped, and when ready for attestation or delivery the officer shall carry it to the Stamp Office, and the person appointed shall examine it and certify on the back the amount of the duty thereon, and also the number of skins, sheets, or words in such copy, and shall in a book make entry thereof, and the stamp duty shall be thereupon paid to the Receiver General, who shall give a certificate of such payment, and such copy shall be stamped with one or more stamps expressive of the amount of the duty.

Penalty on not sending such office copies.

Sect. 79.—If any such officer neglect to send any such copy to the said Stamp Office, or shall attest any such office copy not so duly stamped, he shall forfeit 50*l.*

Deeds not to be registered or enrolled unless stamped.

Sect. 99.—Whenever any deed or instrument shall be delivered for registry or enrolment, the Registrar, deputy Registrar, officer, clerk of the peace, or other person, shall examine such deed, for which he shall receive one shilling; and if such deed shall not be duly stamped such person shall not suffer such deed to be registered or enrolled on pain of forfeiting 50*l.*

Sect. 100.—No memorial to be received for registry without the instrument required to be registered thereby, on pain of forfeiting 20*l.* Memorial.

Sect. 103.—In all cases of the sale of property, real or personal, or of any right, title, interest, or claim in, to, out of, or upon any property where a duty shall be imposed on the conveyance in proportion to the consideration money, the full purchase or consideration money directly or indirectly paid or secured, or agreed to be paid, shall be truly expressed in words at length in or upon the principal or only instrument whereby the thing sold shall be transferred, &c., and also where upon the sale of any annuity, or other right not before in existence, the same shall not be created by actual grant or conveyance, but only secured, the full purchase or consideration money directly or indirectly paid or secured, or agreed to be paid for the same, shall be truly expressed in words at length in or upon the bond or other instrument by which the same shall be secured; and if in any of the said cases the full consideration money shall not be so truly expressed, the purchaser and seller shall each forfeit 50*l.* and be liable to five times the amount of the duty which should have been payable if the consideration money had been truly expressed, beyond the duty actually paid, which quintuple duty shall be a debt to His Majesty, and may be recovered by a summary application to the Court of Exchequer. Conveyances to express the consideration money to be paid. Penalty.

Sect. 104.—Provided, that if any of the parties give information whereby such penalty or quintuple duty, or any part thereof, shall be recovered from any other party, the party giving the information shall be indemnified, and also be rewarded out of the penalty or duty recovered, as the said Commissioners shall think proper, but not exceeding one half; and any other person giving information shall be rewarded in like manner. Parties giving information indemnified and rewarded.

Sect. 105.—Where the full consideration money shall not be truly expressed, the purchaser may recover back so much as shall not be expressed, or the whole, if no part be expressed, together with double costs; but such purchase or conveyance shall not therefore be affected or impeached. Consideration not expressed may be recovered back.

Sect. 106.—If any attorney, solicitor, or other person employed in preparing any such instrument, or for any of the parties thereto in anywise about or relating to the transaction, shall knowingly and wilfully insert or cause to be inserted, in any such instrument any other than the true consideration money, or shall in anywise aid or assist in the doing thereof, he shall forfeit 500*l.* Penalty on attorneys in such cases.

Sect. 107.—Provided, that no person shall be liable to any penalty unless the duty actually paid shall be less than would have been payable in case the full consideration money had been expressed. But no penalty if duty not evaded.

Sect. 108.—As to duplicates of conveyances. See the present provision under the head "CONVEYANCE" in the TABLE. Duplicates.

Sect. 109.—No affidavit made for grounding any presentment for raising money to be received or used, unless written on paper duly stamped, nor any affidavit for accounting for any money presented by any grand jury. Affidavits for grand juries.

Sect. 110.—No collation, presentation, or donation shall be good unless it be in writing and duly stamped if a stamp be necessary; and every such writing shall be deposited with the Registrar, who shall cause the same to be filed and give a certificate thereof, stating that it is duly stamped, or is not subject to any stamp, and the date and when it was filed; and no person shall be inducted who shall not produce such certificate; and any induction made contrary to this provision shall be void, and the person making the same shall forfeit 50*l.* Collation, &c., to be filed.

Sect. 111.—The Registrar shall be entitled to 2*s.* 6*d.*, and 1*s.* 6*d.* for any new certificate; and for any refusal, neglect, or omission herein, or for certifying falsely, to forfeit 100*l.* Registrar's fee.

Sect. 112.—Every person receiving any benefice or spiritual or ecclesiastical promotion shall produce and prove such certificate as part of his title whenever it shall be necessary to prove his title, and without such proof the Court or jurisdiction shall deem such title to be imperfect, and shall decide accordingly, notwithstanding any consent of the parties. Beneficed persons to prove certificates.

Securing the duties on admissions.

Sect. 113.—The college of physicians or surgeons, and every corporation or company which shall admit any person, is required to demand and receive the stamp duty on the admission of such person; and the proper officer shall make an entry, minute, or memorandum of such admission upon the proper stamp in some book, roll, or record, within one month; and if he neglect he shall forfeit 10*l.*; and every such college, corporation, or company shall be answerable for all such duties, and the same shall be a debt to His Majesty, and recoverable with costs by a summary application to the Court of Exchequer.

Books of corporations may be inspected.

Sect. 114.—Officers of the said college, or of any corporation, or company, who have in their custody any book, &c., the sight or knowledge whereof may tend to the securing of any stamp duties, or to the proof or discovery of any fraud or omission, shall permit any person authorized by the Commissioners to inspect the same, and to take notes and memorandums; and if any such officer shall refuse so to do, he shall forfeit 10*l.*

Duty on probates, &c., to be paid only for the estate in Ireland.

Sect. 115.—The stamp duties upon probates or letters of administration, or receipts for legacies, shall be payable only in respect of the estate and effects in Ireland, and of legacies payable out of estates and effects in Ireland; and no person shall be deemed to have proved any will in Ireland until he shall have obtained probate in Ireland.

Trust property.

Sect. 116.—Probate or administration shall be available for recovering or assigning personal estate whereof the deceased was possessed as a trustee, notwithstanding the amount shall not be included in that for which duty was paid.

Affidavit to be made before probate, &c., as to the value of the effects.

Sect. 117.—No Court shall grant probate or administration without receiving an affidavit or affirmation that the estate and effects of the deceased, for or in respect of which the probate or administration is to be granted, are under the value of a certain sum to be specified; which shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the effects.

Affidavit to be sent to Stamp Office.

Sect. 118.—Such affidavit or affirmation shall be exempt from stamp duty, and shall be in the form in the schedule, and shall be certified by the Registrar of the Court, and together with the copy of the will or extract of the administration be transmitted to the Stamp Office, or to the distributor of the district to be sent to the Stamp Office; and on payment of the duty the officer at the Stamp Office, or the distributor shall issue the proper stamp, with a certificate of having received such affidavit, and of the amount of property, and of the payment of the duty; and if any Registrar neglect to transmit such affidavit, or shall issue any probate or administration without having transmitted such affidavit, and received such certificate, or upon vellum or parchment not duly stamped, he shall forfeit the sum of 50*l.*

Sect. 119.—For granting relief where too high a duty has been paid on the probate, &c. The same as 55 Geo. III. c. 184, s. 40, in England. See page 596, *ante.*

Sect. 120.—Provision where too little duty has been paid. *Ib.* s. 41, page 596, *ante.*

Sect. 121.—Where too little duty has been paid on letters of administration, further security to be given to the Ecclesiastical Court before the stamp is rectified. *Ib.* s. 42, page 597.

Penalty for not rectifying mistake.

Sect. 122.—Where too little duty has been paid, the executor or administrator to forfeit 100*l.*, and 10*l. per cent.* on the amount wanting if the mistake be not rectified within six months after the discovery. *Ib.* s. 43, page 597.

Probate, &c., may be stamped on credit.

Sects. 123, 124, 125, 126, and 127.—These clauses relate to giving credit for the duty on probates and administrations, and are precisely the same as sections 45, 46, 47, 48, and 49, of the 55 Geo. III. c. 184, in England. See page 597, *ante.*

Executors, &c., to deliver an account.

Sect. 128.—Every person taking the burthen of the will or administration, shall, before he shall retain for his own use or for the benefit of any other per-

son, or shall transfer, pay, &c., the residue of the personal estate, and of moneys arising from any real estate directed to be sold or mortgaged, deliver to the Commissioners an account of the said personal estate and moneys, or the value of the real estate, if not sold, and of all payments, on the forms printed for such accounts as far as they are applicable, and when they will not so apply, then in such form as shall sufficiently answer the purpose, and if it shall appear to the Commissioners or officers to be just and proper, they shall assess the duty, but if the Commissioners shall not be satisfied, they may require an account to be rendered on oath as in the schedule, and administered by a Justice of the Peace, or Master Extraordinary in Chancery; and they may require payment of the duties within a specified time, and if the same shall not be paid, or satisfactory cause be shown why the same should not be paid, they may institute proceedings in the Exchequer against the executors or administrators, or person taking the burthen of the will or administration, or acting as trustee, and also against the legatee for the duty; and if it shall be shown that no duty is payable, the Court may order all the costs, charges, and expences to be paid by the person of whom the Commissioners shall have required payment by way of penalty for not having, after such requisition, shown that no duty was payable.

Proceedings to be instituted for duties on annuities.

Sect. 129.—Provided, that where it shall be proved by oath or proper vouchers, to the satisfaction of the Commissioners, that an executor or administrator hath paid debts due and owing from the deceased, and payable by law out of his personal estate, to such an amount as, being deducted from the amount and value of the estate for which probate or administration was granted, shall reduce the same to a sum which, if it had been the whole amount, would have occasioned a less stamp duty to be paid on such probate or administration than shall have been actually paid, the Commissioners may return the difference, provided it be claimed within three years; but where, by reason of any proceeding at law or in equity, the debts shall not have been ascertained and paid, or the effects shall not have been recovered and made available, and in consequence the executor or administrator shall be prevented from claiming such return within the said term, the Commissioners of Stamps may allow further reasonable time.

Probate duty returned where the estate is reduced by debts.

Sect. 130.—Executors and administrators may transfer and recover property which the deceased was possessed of or entitled to as a trustee, on an affidavit or affirmation being made as hereinafter mentioned.

Executors, &c., may transfer or recover property held by deceased in trust, affidavit being made of the fact.

Sect. 131.—Upon any requisition made, the executor or administrator, or some other person to whom the facts shall be known, shall make a special affidavit or affirmation thereof, stating the property in question, and that the deceased had not any beneficial interest in the same, or no other than shall be mentioned, but was possessed thereof in trust for the person or for the purposes specified; and that the beneficial interest of the deceased (if any) doth not exceed a certain value, to be specified, and that the value for which the stamp duty was paid is sufficient to cover such interest as well as the rest of his personal estate; and where the affidavit shall be made by any other than the executor or administrator, such executor or administrator shall make affidavit or affirmation that the facts are true to the best of his knowledge and belief, and that the property is intended to be applied and disposed of accordingly; which affidavit or affirmation shall be sworn or made before a Master in Chancery, ordinary or extraordinary.

Sect. 132.—Actions for anything done under this Act, or any Act relating to stamp duty to be commenced within six calendar months, and be brought in the county or place where the cause of action shall arise; and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff be nonsuited, or discontinue, or a verdict or judgment on demurrer be given against the plaintiff, the defendant shall recover treble costs.

Limitation of actions.

General issue may be pleaded.

Treble costs.

Sect. 133.—All penalties relating to stamp duty shall be paid in British currency, unless otherwise directed.

Fines in British currency.

Recovery and application of penalties.

Sect. 134.—All such penalties may be recovered with costs by His Majesty's Attorney General, or by the Inspector General, or other Inspector of stamp duties, or by any other officer or person authorized by the Commissioners, by action, &c., in any of the superior Courts, or by civil bill in the Court of the recorder, chairman, or assistant barrister; and every such penalty not otherwise directed shall be paid to the use of His Majesty: Provided, that in case of any proceeding by any such Inspector or officer, or person authorized, the Commissioners may order to be paid to him out of the penalty such sum not exceeding one moiety as they shall think proper; and the like appeal shall be lawful from the decision on civil bill, and under the same terms, &c., as in the case of any civil bill for any sum not exceeding 20*l.*

Penalties by officers of Court, &c.

Sect. 135.—Penalties for offences by any officer of any Court, or any six clerk, solicitor, attorney, proctor, notary public, or procurator, may be recovered with costs in the Court of proper jurisdiction and not otherwise.

Regulations to be observed where seizures are made.

Sect. 136.—Where any seizure is to be made, the person making it shall, within ten days, leave at the office of the distributor a note signed by him stating the time and place of seizure and the reason for making it, and the owner may within twenty-one days from the seizure require a copy of such note, paying 1*s.*, and leave at such office a claim signed by him stating his place of abode, and claiming the goods so seized, and the person making such seizure may at any time not exceeding thirty days from the seizure require a copy of such claim, paying 1*s.*, and make application to any justice for a summons against such claimant, and such summons being duly served either personally or at his place of abode, and copies of such seizing note and claim, attested by the distributor, being produced, such justice shall proceed to hear the merits, and shall thereupon, or upon the non-appearance of either party, decide on the merits and make his adjudication accordingly: Provided, that either party may within ten days appeal to the next general quarter sessions which shall be held after fourteen clear days from such adjudication; and in case the judgment of such justice shall be affirmed, the justices at sessions may award the person appealing to pay the costs of the appeal.

Seizures without giving proper notice, void.

Sect. 137.—If the person making seizure shall not leave notice, or in case of claim shall not cause such summons to be issued and served, the seizure shall be deemed to have been unlawfully made; and if such claim shall not be made the seizure shall be deemed lawful and just; and the adjudication of such justice, if not effectually appealed from, and, in case of appeal, the decision of the court of quarter sessions shall be final.

Recognizance on appeal.

Sect. 138.—The party appealing shall within ten days from the adjudication enter into a recognizance with sureties, before any justice of the peace, in such sum as such justice shall think proper, to pay costs, and if he shall not so do, such appeal shall be void.

Any justice may determine offences where the penalty does not exceed 40*l.*

Sect. 139.—Any justice of the peace in Ireland, within whose jurisdiction any such offence, for which the penalty shall not exceed 40*l.*, shall be committed, upon any information or complaint in writing shall summon the accused, and the witnesses on either side, and examine into the fact, and upon proof made by confession, or by the oath of one or more witness or witnesses, give judgment for such penalty and costs to be assessed, and issue his warrant for levying the same, and where goods cannot be found, any justice may commit the offender to prison for not less than one calendar month, nor more than three, unless such penalty and costs be paid; and if any person be aggrieved he may, on giving security, if the defendant for the penalty and costs, if the prosecutor for costs only, appeal to the sessions to be held next after fourteen days, giving ten days' notice. The sessions may award costs and proceed to recover the penalty.

Within twelve months.

Sect. 140.—No person to be liable to be convicted unless complaint be made within twelve months.

What shall be

Sect. 141.—It shall not be necessary in any proceeding for the recovery of

any penalty, or for summoning any witness in any case, that the original or any other process or summons, or any notice or order whatsoever should be personally served, but it shall be sufficient that the same be served at the party's then place of abode; and if the defendant be an officer of any court, and such proceeding relate to his office, it may be served at the office, on some person acting in the business of such office.

good service of process.

Sect. 142.—If any witness neglect to appear (his expences, if required to go a greater distance than five miles, being first paid or tendered), or upon appearing refuse to be examined without a reasonable excuse, he shall forfeit 10*l.*

Witnesses neglecting to appear, &c.

Sect. 143.—On any proceeding for any penalty, any informer or other person who would be entitled to the penalty, or any part thereof, or to any fee, profit, reward, or emolument whatsoever, or who may expect the same, shall nevertheless be admitted as a witness.

Informers admitted as witnesses.

Sect. 144.—Every penalty, or such part as shall remain after the payment of the inspector or other officer, shall, unless otherwise particularly directed, within one calendar month, be paid to the Receiver General of stamp duties, if levied in the county of Dublin, or county of the city of Dublin, and if in any other part of Ireland, then to the distributor of stamps; and if any person neglect to pay over the same he shall forfeit 20*l.*

Penalties to be paid to the Receiver General.

Sect. 145.—If any justice of the peace, or peace officer, neglect or refuse in any instance to carry into execution this Act, or any Act relating to stamp duties, upon proper application, he shall forfeit the sum of 40*l.*

Penalty on justices, &c., for neglect.

Sect. 146.—The justice to cause the conviction to be made out as prescribed in this clause, or in any other form of words to the like effect, *mutatis mutandis*, to be written on parchment, and returned within ten days to the clerk of the peace, under a penalty of 10*l.*

Form of conviction.

Sects. 147 & 148.—Any warrant to be issued for levying any sum under any conviction, or for committing an offender, to be in the form prescribed in this clause, or in some other form of words to that or to the like effect.

Form of warrants.

Sect. 149.—The clerk of the peace within one calendar month to furnish to the distributor a copy of the conviction, for which he shall receive 1*s.*; the distributor to transmit it to the Commissioners; for any neglect by either to forfeit 5*l.*

Copy of conviction to be forwarded.

Sect. 150.—If different proceedings be taken against the same person for the same offence, he shall be liable only to one penalty, the right to which shall depend on the priority of the proceedings.

Only one penalty for one offence.

Sect. 151.—The Commissioners, under the direction of the Treasury, may mitigate any penalty.

Treasury may mitigate penalties.

60 Geo. III. c. 9.

For subjecting certain publications to the duties upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels. See "NEWSPAPERS," page 491.

1 & 2 Geo. IV. c. 55.

To remove doubts as to the amount of stamp duties to be paid on deeds and other instruments under the several Acts in force in Great Britain and Ireland respectively. See page 273.

To grant, for the term of five years, additional stamp duties on certain proceedings in the Courts of Law, and to repeal certain other stamp duties in Ireland.

Sect. 1.—In order to provide for the salaries, &c., of the Judges and divers officers of the Courts in lieu of fees, the stamp duties specified in the schedule were granted; to be under the Commissioners of Stamps, and subject to the provisions of the 56 Geo. III. c. 56, and be paid in British currency, except the duty of 4*d.*, which is to be in Irish.

Separate stamps.

Sect. 4.—Separate stamps to be used for denoting the duties, and to have thereon the words "Law Fund," and to be the only lawful stamps for these duties, and to be used for no others. Two or more may be used on the same paper.

Stamps may be altered.

Sect. 5.—The stamps may be altered from time to time and new ones used in lieu, as His Majesty, the Lord Lieutenant, or the Commissioners shall think fit: Provided, that public notice be given in the Dublin Gazette, and in some other public newspaper, a convenient time before.

Writings not having the proper stamps to be void.

Sect. 6.—Paper, &c., not marked with such stamps shall be of no other effect than if the matters mentioned in the schedule had been written on paper not stamped, although any other stamps may be thereon; and all persons who write any such matter on any paper having any such improper stamp thereon shall incur such penalty as they would be liable to in case such matter had been written or printed on paper not stamped.

Writing to cover the stamps.

Sect. 7.—All such matters shall be written in such manner that some part of the writing shall be on the stamps, and such writing shall from thence be continued in the usual form, so that no blank space be left whereby such stamps might be made applicable to any other instrument upon pain of forfeiting 10*l.*

Penalty on stamping may be remitted within sixty days.

Sect. 8.—When any instrument shall have been written on parchment, &c., not duly stamped, from accident or inadvertency, urgent necessity or unavoidable circumstances, and without any intention to defraud, then if it shall, within sixty days from the first execution, be brought to the Stamp Office, and the duty shall be paid, the Commissioners may remit any penalty payable on stamping it or any part thereof, and cause it to be stamped with the proper stamp.

Spoiled stamps may be allowed.

Sect. 9.—Upon proof on oath, or affirmation, before any of the Commissioners, or any officer by them appointed, that an instrument hath not been executed or signed by any party, or the vellum, &c., used for any of the purposes for which it was intended, or that any form of instrument, printed with blanks, hath by any event or fatality become unfit for the purpose intended, and the person making such affidavit or affirmation hath not, nor hath any other person on his account received, and that he will not receive any money or other consideration for the stamp thereupon, and that the said stamp is the property of the person making such affidavit, and hath been paid for by him to the full amount of the duty, and that he will be a loser to such amount unless he shall receive other stamps in lieu; and upon delivering such stamped vellum, &c., the Commissioners may stamp other vellum, &c., with the same duties, or any others, on payment of the difference, if any: Provided it be brought within six calendar months after the instrument is written, or the blank form rendered unfit, if it belong to any person resident in Dublin, or within ten miles of the castle, or within twelve calendar months if elsewhere: Provided also, that the Commissioners shall not be obliged so to impress any stamp which shall then be confined to paper having the water mark of the Stamp Office.

Sect. 10.—If any person file any matter or thing in respect whereof stamp duty is payable, and no time is allowed by law for stamping the same after filing, and the same is not at the time of filing duly stamped, such person and every officer in whose office the same is received, shall forfeit 20*l.*

Proceedings not to be filed unless stamped.

Sect. 11.—Every officer entitled or intrusted to make or write any record, &c., or writing whatsoever chargeable with stamp duty, or to issue process, or file proceedings, or do any act in the execution of his office with respect to any article chargeable with duty, in whose office there shall be any fraud, practice, or neglect, by means whereof His Majesty may be deprived of any duty by writing any such record, &c., upon vellum, &c., not duly stamped or stamped with any counterfeit stamp, or stamped for a lower duty than is payable, or by any act or neglect in his office, he shall forfeit 100*l.*

Officers defrauding the revenue.

Sect. 12.—Every officer in whose office any pleading, &c., shall be received, shall be deemed to have received the same; and every person who shall write, or cause to be written, any record, &c., upon any vellum, &c., stamped with any counterfeit stamp, shall be deemed to have known such stamp to be counterfeit unless he prove that it was bought at the Stamp Office, or of some distributor or sub-distributor, or person licensed.

Officers using forged stamps deemed to have known the same to be forged.

Sect. 13.—When any person shall desire to have any entry made in respect of which any stamp duty is payable, he shall pay to the officer the duty, and the officer shall pay it over in manner after mentioned; and if he do not receive the duty he is still to be responsible for it.

Officers to pay over the duty on entries in Courts.

Sect. 14.—If the person who receives the duties be a deputy or clerk, the superior officer shall be liable to pay the same.

Principals liable for clerks.

Sect. 15.—Every officer who shall by himself, or any other person, receive any such stamp duty, shall be accountable for the same, and the amount shall be a debt to His Majesty, and the Court may grant a rule requiring him to show cause why he should not forthwith pay the same, and, if necessary, why he should not deliver an account on oath of all such duties so due, and refer the taking of such account to any officer or other person, and make such order for the payment of what shall be due and of the costs as shall seem fit.

Public officers to pay duties as directed.

Sect. 16.—Every officer of the Courts of King's Bench, Common Pleas, or Exchequer, who shall have the custody of any book wherein the marking of any judgments shall be entered, or wherein shall be entered the satisfaction of any judgment, shall keep a duplicate of every such book, wherein all such entries shall be truly copied.

Duplicate book of entries of judgments.

Sect. 17.—In each of the said Courts to be kept two books, transcripts of each other, and all final judgments to be entered in each; and the proper officer, within ten days after the first day of every term, to deliver at the Stamp Office one of the books, with the judgments so entered therein in the term and vacation next preceding, together with a certificate therein signed by him after the last entry, stating the number of judgments liable to duty entered within the said term and vacation, and the amount of the duties, and thereupon pay the duties; and if the sum paid shall be found to be the sum properly payable, the officer shall certify at the foot of the judgments that the duty has been paid, and such book shall be stamped for denoting the payment; and the said books shall be called "The Books of Final Judgments."

Books of final judgments to be kept, and delivered at Stamp Office four times a year, and the duties paid.

Sect. 18.—In each of the said Courts to be kept two books, transcripts of each other, in each of which shall be entered the particulars of all judgments on the record of which satisfaction shall be entered, that is to say, the names of the cognizor and cognizee, the sum and the term in or as of which each judgment may have been entered up; the duty thereon to be paid, and the books stamped as provided in the preceding clause; the said books to be called "The Satisfaction Judgment Entry Books."

Books of the satisfaction of judgments to be kept.

Sect. 19.—To be also kept in every such Court two books, wherein the interlocutory judgments shall be entered, and which shall be called "The

Interlocutory judgment books to be kept.

Books of Interlocutory Judgments," the duties thereon to be likewise paid as before provided.

Books to be of equal force; and entries to correspond.

Sect. 20.—In every such case each book to be of equal force and validity, and both of them deemed originals.

Sect. 21.—The books to be kept so as to agree with each other; and whenever any book is returned from the Stamp Office the officer forthwith to cause to be written therein transcripts of all judgments in the Court while it was out of his possession, so as to correspond with the other.

How books to be delivered.

Sect. 22.—The same book not to be delivered in two successive terms, but one in Hilary and Trinity, and the other in Easter and Michaelmas terms.

Penalty on officer's neglect; or making false entry.

Sect. 23.—If any such officer neglect to deliver any such book, or omit to make an entry, he shall forfeit 50*l.*; and if he wilfully deface or destroy any such book, or make any false entry, or without authority erase or alter any entry, or permit the same to be done, he shall forfeit 500*l.*

All books of entries to be produced at the Stamp Office.

Sect. 24.—The officer having the custody of any books containing any entries whatsoever relating to proceedings, within the ten days after the first day of every term to bring every duplicate book of the entry of judgments, or satisfaction, and every original book of any other entries, subject to duty, to the Stamp Office, and shall insert therein, immediately after the last entry, at the time of producing the same, a certificate, stating the number of such entries in the term and vacation immediately preceding as are subject to stamp duty, and pay all such stamp duties, and such book shall thereupon be stamped for denoting the stamp duties so then paid in the same page or place on which the certificate shall be written; and if any officer neglect to bring any such book, or to furnish such certificate, or to pay such duties, or in case of any false entry or omission such officer shall forfeit 20*l.*; and if such certificate shall not appear, the proper officer of the said Stamp Office shall himself make it.

Clerks for neglect, &c, to be punished for contempt.

Sect. 25.—If any clerk or other person employed be guilty of any neglect or misconduct, by reason whereof any officer may become liable to any of the penalties aforesaid, he shall be deemed guilty of a contempt, and be punished at the discretion of the Court.

Separate accounts.

Sect. 26.—Separate accounts to be kept of the said duties by the Commissioners; the duties to be carried to the consolidated fund.

Sect. 27.—Separate accounts of the sums received and paid to be kept at the receipt of the Exchequer, and sent to the Lord Lieutenant, and laid before Parliament yearly.

Sect. 28.—On the death of the prothonotaries certain of the duties to cease.

NOTE.—The duties were granted for five years only, but by the 7 Geo. IV. c. 20, they were continued until other provision should be made by Parliament in respect thereof.

For the Duties, see TABLE, *ante*, page 801.

3 Geo. IV. c. 116.

Registry of deeds where memorial prepared in England.

Sect. 3.—Where a deed or conveyance is to be registered in Ireland, the memorial whereof is prepared in England, the Registrar shall, upon receiving the memorial, enter the same in the manner in which all other memorials are registered and entered, without the instrument being produced or the stamps thereon examined, anything in the 56 Geo. III. c. 56, to the contrary.

3 Geo. IV. c. 117.

To reduce the stamp duties on reconveyances of mortgages, and in certain other cases. See the TABLE.

Sect. 5 repeals the provision contained in the 1 & 2 Geo. IV. c. 55, which

directs that any instrument duly stamped pursuant to that Act shall not be liable to any duty by reason of its containing any covenant, &c., for payment of money, so far as relates to money payable in Ireland.—See page 273.

4 Geo. IV. c. 78.

To grant additional stamp duties on certain proceedings in the Court of Chancery, and in the Equity side of the Court of Exchequer in Ireland.

Sect. 1.—In order to provide for the salaries and allowances to Masters in Chancery, and the Chief Remembrancer of the Exchequer, the duties specified in the schedule were granted; the same to be under the Commissioners of Stamps, and subject to the regulations of the 56 Geo. III. c. 56, and to be paid in British currency, except a duty of 10*d.*, which is to be paid in Irish currency.

Separate stamps to be used.

Sect. 4.—Separate stamps shall be used for denoting the duties; and have marked thereon the words "Chancery Fund" and "Exchequer Fund" respectively, and be the only true and lawful stamps to denote the said duties.

Stamps may be changed.

Sect. 5.—The said stamps may be altered from time to time, as His Majesty, or the Lord Lieutenant, or the Commissioners shall think fit: Provided, that public notice of every such alteration be given in the Dublin Gazette, and in some other public newspaper, a convenient time before.

Other stamps to be of no effect.

Sect. 6.—Such stamps to be the only proper stamps for denoting the duties granted by this Act; and all vellum, &c., not marked with such stamps shall be of no other effect than if the matters mentioned in the schedule had been written on vellum, &c., not stamped, although any other stamps may be thereon; and all persons who shall so write or print any such matter on any paper, &c., having any such improper stamp, shall incur such penalty as for writing it on paper, &c., not stamped.

Part of the writing to be on the stamp, &c.

Sect. 7.—Some part of the writing to be on the stamps; and such writing to be thence continued in the usual form of writing deeds or writings, so that no blank space be left whereby such stamps might be made applicable to any other instrument, upon pain of forfeiting 10*l.*

Instruments may be stamped within 60 days without penalty.

Sect. 8.—When any instrument is written on parchment, &c., not duly stamped by accident or inadvertency, or from urgent necessity or unavoidable circumstances, and without any intention to defraud, then if within sixty days from the preparation or first execution thereof it be brought to be stamped, and the duty be paid, the Commissioners may remit any penalty payable on stamping it, or any part thereof, and cause such instrument to be stamped with the proper stamp.

Spoiled stamps.

Sect. 9.—Allowance may be made for stamps spoiled, as in 1 & 2 Geo. IV. c. 112, s. 9, *ante*, 832.

Sects. 10 & 11.—Separate accounts to be kept as provided by the said Act, ss. 26 & 27.

For the Duties, see the TABLE, *ante*, page 804.

5 Geo. IV. c. 41.

To repeal certain duties on law proceedings; and for better protecting the duties payable upon stamped vellum, parchment, and paper. See "FORGERY," "FRAUD."

6 Geo. IV. c. 41.

To repeal the stamp duties upon the transfer of property in ships and vessels, and upon bonds and debentures given in relation to the duties, drawbacks, and bounties of Customs or Excise; and to grant other duties thereon.

The Duties payable under this Act will appear in the TABLE.

Sect. 4 imposes a penalty for including in the same bond, relating to the duties of Customs or Excise, goods belonging to different persons. See page 580, *ante*.

6 Geo. IV. c. 42.

For the better regulation of copartnerships of certain bankers in Ireland.

Societies of more than six persons may be bankers.

Sect. 2.—Any number of persons, united or to be united in copartnership in Ireland, consisting of more than six in number, and not having any house of business less than fifty miles from Dublin, may carry on the business of bankers, and borrow, owe, or take up money on their bills or notes, payable on demand, or at any time after date, or after sight, and make and issue such notes or bills at any place exceeding fifty miles from Dublin, all the individuals composing such copartnerships being liable for the payment, in manner hereinafter provided.

Sect. 3.—Any such copartnership may employ agents to transact business.

Not to issue notes within certain limits.

Sect. 4.—Not to extend to authorize any such copartnership to pay, issue, or re-issue at Dublin, or within fifty miles, any bill or note payable to bearer on demand, or any bank post bill, nor to draw upon any partner or agent in Dublin, or within fifty miles, any bill payable on demand, or for less than fifty pounds, nor to borrow, owe, or take up, in England or in Dublin, or within fifty miles, money on any note or bill of such copartnership payable on demand, or at any less time than six months from the borrowing thereof, or to make or issue any bill or note contrary to the 21 & 22 Geo. III. c. 16, or 1 & 2 Geo. IV. c. 72, save as provided by this Act.

Persons resident in Great Britain, &c., may be members.

Sect. 5.—Not to prevent any person in Great Britain or Ireland from being a member or a subscriber and contributor to the stock and capital of any such copartnership; and any such copartnership formed or begun to be formed under the 1 & 2 Geo. IV. c. 72, and 5 Geo. IV. c. 73, and of which any person shall be a member, or to which he shall become a subscriber or contributor as aforesaid, shall be deemed to be a copartnership within this Act.

The names of the firm, the partners, and the officers to be registered.

Sect. 6.—Between the 25th of March in any year, and the 25th of March following, a return shall be made out by the secretary, or some other officer, and be signed by him, and be verified by his oath before a justice, according to the form in the schedule No. 1, annexed; and in every such return to be set forth the name or firm of such copartnership, the names and places of abode of all the partners as the same appear on the books, the firm and name of every bank established by such copartnership, and the names of two or more individuals of such partnership resident in Ireland, each of whom shall be considered as a public officer of such copartnership, and the title of office or other description of every such individual, in the name of any one of whom such copartnership shall sue and be sued, and also the name of every town and place where any such bills or notes shall be issued by such copartnership, or any agent; and every such return shall be produced at the Stamp Office, and an entry and registry thereof made in a book kept for that purpose, and if any such copartnership neglect to deliver such return, for every week they so neglect to forfeit 500*l*.

Sect. 7.—Whenever any such entry and registry shall be made, a certificate to be granted by the Commissioners or some person authorized for that purpose, to the copartnership, on paper duly stamped with the stamp required for certificates to be taken out yearly by bankers; a separate certificate to be granted for every place where any such bill or note shall be issued; such certificate to specify the proper firm, style, title, or name of such copartnership, under which notes are to be issued, the places where notes are to be issued, and the name and place of abode and title of office or other description of the individuals named as public officers in the name of any one of whom such society or copartnership shall sue and be sued; and be dated on the day on which the same shall be granted, and continue in force until the 25th day of March following, and be sufficient evidence of the appointment and authority of such public officers.

Stamp Office to give stamped certificates of entry.

Sect. 9.—Provided that the secretary or other officer may, as occasion may require, from time to time, make out upon oath, in manner before directed, a return of the name of any new or additional public officer, and the names of persons who have ceased to be members, and of any who may have become members, in the form in the schedule No. 2; such returns to be from time to time produced and entered or registered at the Stamp Office.

Registry of new officers or members.

Sect. 10.—All proceedings for any such copartnership shall and may be prosecuted in the name of any one of the said public officers, for the time being, as the nominal plaintiff or petitioner on behalf of such copartnership; and all proceedings against such copartnership shall and may be prosecuted against any one of such public officers as the nominal defendant on behalf of the society; and in criminal prosecutions the property of the company may be laid to be that of the officer; the death, resignation, removal, or any act of such public officer not to abate or prejudice any proceeding against or on behalf of such copartnership.

Societies to sue and be sued in the name of their public officers.

Sect. 11.—No person having any demand against any such society to bring more than one action or suit in respect of such demand; and the proceedings by or against any one of the public officers may be pleaded in bar of any other for the same demand.

Not more than one action for the recovery of one demand.

Sects. 12 to 21 provide for recording in one part of the United Kingdom judgments obtained against any officer in the other, and for enforcing such judgments, indemnifying the officer, &c.

Sect. 22.—Any member may sell and transfer his shares; and whenever any such transfer shall be made, a return thereof, in the form in the schedule No. 3, shall be made upon oath, in manner before directed by the secretary or other officer, and be registered; and the person to whom such transfer shall be made shall stand in the place of the person making it: Provided, not to be deemed to discharge or release any member making such transfer from being liable for the bills, notes, and other engagements of such society existing at the time of the register of such transfer, provided that no such transfer shall take place without the consent of the directors, nor be valid unless signed by one or more of such directors as the court of directors for the time being may determine.

Members may transfer shares.

6 Geo. IV. c. 118.

To transfer the collection and management of the duties on gold and silver plate, and on certain licences, from the Commissioners of Excise to the Commissioners of Stamps.

Sect. 1.—The duties granted by the 47 Geo. III. sess. 1, c. 18, upon gold and silver plate wrought in Ireland; and also the duties, granted by the 55 Geo. III. c. 19, upon licences to persons to sell or make gold or silver plate in Ireland; and also upon licences to hawkers and pedlars; and also upon licences

Duties on plate and on licences to sell or make plate; on li-

cences to hawkers, &c., to be under the Commissioners of Stamps.

to let horses to hire, shall be under the Commissioners of Stamps, and be deemed Stamp Duties, and paid in British currency.

NOTE.—The duties on licences to let horses for hire were re-transferred to the Excise by 7 & 8 Vict. c. 67.

Excise Acts to be enforced by the Commissioners of Stamps.

Sect. 4.—All the provisions in the said Acts, or in others relating to such duties or licences, to be observed by the Commissioners of Stamps as if originally granted to them, and repeated in this Act; and such Commissioners may grant all such licences, and manage all such duties as the Commissioners of Excise might have done, and all penalties imposed by any such Act relating to such duties shall be incurred and may be sued for, recovered, levied, mitigated, and applied in relation to the matters placed under the Commissioners of Stamps.

Stamp Acts also to be applied.

Sect. 5.—And all the provisions in any Act in relation to duties of stamps, so far as applicable, to be of full force and effect, and observed, &c., with respect to the duties by this Act placed under the management of the Commissioners of Stamps.

Commissioners may stay proceedings for penalties, &c.

Sect. 6.—The Commissioners of Stamps in Ireland may stay proceedings commenced by their direction for the recovery of any penalty under any Act, on payment of part only of any such penalty, with or without costs, or only of the costs or any part thereof, and give all or any part of the penalty to the person informing.

7 & 8 Geo. IV. c. 55.

To consolidate the Boards of Stamps in Great Britain and Ireland. See page 581.

9 Geo. IV. c. 13.

For further regulating the payment of the duties on fire insurances (plurality of risk). See page 394.

9 Geo. IV. c. 18.

To repeal the duties on cards and dice and grant others in lieu.

9 Geo. IV. c. 25.

To authorize the appointment of persons to act as solicitors on behalf of His Majesty in revenue matters. See page 102.

9 Geo. IV. c. 49.

Penalties as to receipts reduced to 10*l.*

Sect. 19, reciting that by the 55 Geo. III. c. 100, three penalties of 20*l.* each, and one of 50*l.*, are imposed upon persons committing the several offences specified in that Act, in relation to the stamp duties on receipts in Ireland; it is enacted, that any person who shall have committed or shall commit any of the offences in the said Act specified, in relation to the stamp duties on receipts in Ireland, shall forfeit 10*l.* and no more.

Penalty on clerks for offences as to receipts.

Sect. 20.—So much of the said Act as declares that any person in the employment of another, who shall commit certain offences relating to receipts, shall be deemed guilty of a misdemeanor, is hereby repealed; and it is enacted,

that any clerk or other person in the employment of another, who shall commit any such offence, shall forfeit 10*l.*, and no more, in addition to the penalty to which the employer is liable.

Sect. 21.—The said several penalties to be recovered as any penalty under the Stamp Acts. Recovery of penalties.

9 Geo. IV. c. 80.

Sect. 1.—Persons carrying on the business of bankers in Ireland, who shall have duly registered their firm, and obtained a licence and given security as after mentioned, may make and issue on unstamped paper their notes for payment to the bearer on demand of any sum not exceeding 100*l.* Bankers may issue unstamped notes on being licensed.

Sect. 2.—Any two of the Commissioners, or any authorized officer, may grant such licences, which shall be charged with a stamp duty of 30*l.*

Sect. 3.—A separate licence to be taken out for every place where such notes shall be issued: Provided, no person to be obliged to take out more than four licences; and if he issue notes at more than four places, then after taking out three licences for three places, he may have all the rest included in a fourth licence; and if after having taken out four licences he shall begin to issue notes at any other place, it shall not be necessary to include it in any licence until the twenty-fourth day of March next following. A licence to be taken out for every place, but not more than four licences.

Sect. 4.—Every licence to specify all the particulars required in the certificates for issuing notes allowed to be re-issued; and licences granted between the 24th March and the 25th April to be dated on the 25th March; those granted at any other time to be dated on the day on which they are granted; every licence (notwithstanding any alteration in the copartnership) to continue in force until the 24th March following, inclusive. Regulations respecting licences.

Sect. 5.—Provided, that where any banker shall have taken out such certificate, and shall be desirous of taking out a licence, the Commissioners may allow the stamp upon such certificate, and grant a licence under this Act; every such licence also to authorize the re-issuing of all notes payable to the bearer on demand, which such banker may have previously issued on paper duly stamped, until the 24th March inclusive next following, provided such notes may so long be lawfully re-issued. Duty on existing certificates may be allowed when licences taken out.

Sect. 6.—If any banker licensed under this Act shall issue any unstamped notes, he is, so long as he continues licensed, to issue on unstamped paper all his notes to bearer on demand (not exceeding 100*l.*); and is not to issue, for the first time, any such note on stamped paper. Bankers licensed to issue all their notes unstamped.

Sect. 7.—Before any licence is granted, security to be given by bond to His Majesty, with a condition to enter in books kept for that purpose, an account of all such unstamped notes as shall be issued, specifying the amounts and dates of issuing; and of all such notes as, having been issued, shall have been cancelled, and the dates of cancelling; and, when requested, produce and show such accounts to be inspected by the Commissioners of Stamps, or any officer appointed under their hands and seals for that purpose; and also deliver to the Commissioners half-yearly, (that is to say,) within fourteen days after the first day of January and the first day of July in every year, a true account, verified upon the oaths or affirmations (which any justice may administer) to the best of the knowledge and belief of such person and of his cashier, accountant, or chief clerk, or such of them as the Commissioners shall require, of the amount or value of all unstamped notes in circulation on Saturday in every week, for half a year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount of such notes; and also to pay to the Receiver General of stamp duties, or to some other person duly authorized by the Commissioners, as a composition for the duties during such half year, 1*s.* 6*d.* for every 100*l.*, and also for the fractional part of 100*l.* of the said average amount of such notes in circulation. See TABLE for the present composition. Security.

For what period notes to be deemed in circulation.

Sect. 8.—Unstamped notes issued under this Act shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling, both inclusive, except the period during which they shall be in the hands of the banker.

Regulations respecting bonds.

Sect. 9.—In every such bond the persons intending to issue unstamped notes, or such of them as the Commissioners or their officer shall require, shall be the obligors; and such bond shall be in 100*l.*, or in such larger sum as the Commissioners or officer may judge to be the probable amount of the composition during one year; and the Commissioners, or officer, may fix the times of payment, and specify the same in the condition; and every such bond may be required to be renewed from time to time, at the discretion of the Commissioners, or officer, and as often as forfeited, or the parties, or any of them die, become bankrupt or insolvent, or reside beyond the seas.

Fresh bonds to be given on alterations of copartnerships.

Sect. 10.—If any alteration be made in the copartnership, whether by the death or retirement, or by the accession of any new partner, a fresh bond shall, within one calendar month, be given, which shall be a security for the duties which may be due or may become due in respect of the notes issued by the old copartnership, and in circulation, as well as for duties in respect of the notes issued by the new copartnership: Provided, that no such fresh bond shall be rendered necessary by any such alteration in any copartnership of persons exceeding six, but that the bonds to be given by them shall be securities for all the duties they may incur so long as they shall exist, or the persons composing the same or any of them shall carry on business together, or with any other persons, notwithstanding any alteration in the copartnership; saving always the power of the Commissioners to require a new bond in any case where they shall deem it necessary.

Penalty for not renewing bond.

Sect. 11.—If any person, who shall have given security, refuse or neglect, for one calendar month, to renew such bond when forfeited, and as often as required, he shall forfeit 100*l.*

Other persons issuing unstamped notes.

Sect. 12.—Nothing in this Act shall exempt from the penalties imposed by any Act in force for issuing notes not duly stamped, any person who shall issue any unstamped note, unless he shall be duly licensed.

Recovery of penalties.

Sect. 13.—Penalties incurred under this Act to be recovered in any Court of Record, in the name of the Attorney or Solicitor General.

Bank of Ireland.

Sect. 14.—Nothing in this Act to affect the privileges of the Bank of Ireland.

Only four certificates, under 6 Geo. IV. c. 42, required.

Sect. 16.—No society or copartnership of bankers exceeding six in number, carrying on the business of bankers under the 6 Geo. IV. c. 42, to be obliged to take out more than four certificates; and in case of issuing bills or notes at more than four places, then after taking out three certificates, all the remainder of the places may be included in a fourth certificate.

Certificates to continue notwithstanding fresh registry.

Sect. 17.—Every certificate taken out by any such copartnership to continue in force until the 25th day of March next following the date, notwithstanding any fresh registry; and if any fresh registry shall be made after taking out four such certificates, a further certificate not to be required for any place not included in any of such certificates, until the 24th day of March next following.

9 Geo. IV. c. 81.

For making bankers' notes payable at the places where they are issued.

All notes to be payable at the place where issued.

No banker, in Ireland, to make, issue, or re-issue any note or bank post bill not payable at the place where the same is made, issued, or re-issued; and in every such note the place where the same was issued or re-issued to be expressly mentioned: Provided, that any such note or bill issued or re-issued contrary to

this Act shall nevertheless not only be valid against the banker issuing or re-issuing the same, but such banker shall be liable to pay double the amount of the sum specified in such note or bill, (to be sued for and recovered by the holder) either at the place where the same shall have been issued or re issued, or at any other place where such bank, company or banker shall have any house or establishment for business notwithstanding such note or bill shall not be expressed to be so payable, not to prevent any such note or bill from being made payable at several places, if one of such places shall be the bank or place where the same shall be issued

Not to prevent their being payable at several places

1 Will IV c 73

To increase the amount of the security to be given against the publication of libels, and to extend such security See "NEWSPAPERS"

2 & 3 Will IV c 91

To explain doubts that have arisen respecting the stamp duty payable by freemen of corporations entitled by virtue of trade and residence in the corporate towns and counties of cities and towns in Ireland

Sect 1, reciting that at all times since the 56 Geo III c 56, persons who by virtue of being engaged in any trade, &c , are entitled to take up the freedom of any corporation or company in Ireland as of right, have been universally considered as persons claiming by right of apprenticeship, and have been admitted to their freedom on payment of the duty of 1*l* each, and that doubts had lately arisen as to the right of such persons to take up their freedom upon such terms it is enacted, That all such persons shall be admitted to such freedom upon payment of the same duty as all other freemen by right, (that is to say,) on payment of the duty of 1*l* only

Persons admitted to freedom as traders to pay 1*l* duty

Sect 2 —Provided, that in default of payment to be subject to the same penalties to which freemen in right of birth, marriage, or service are or would be liable

To be subject to same penalties as others

3 & 4 Will IV c 23

For reducing and repealing certain stamp duties, and for exempting insurances on farming stock See page 394

3 & 4 Will. IV c 97

Sect 21 —Upon the exportation from Ireland for any foreign parts of any gold or silver plate wrought or manufactured in Ireland (the same being new, not having been used), duly marked for denoting the payment of the duty, the drawback or allowance at the rate of 1*s* per ounce troy to be allowed Not to extend to gold rings, or articles of gold not exceeding the weight of two ounces —See 5 & 6 Vict c 82, s 7, *post.*

Drawback on plate

5 & 6 Will IV c 64

To alter certain duties of stamps These alterations, so far as they still remain, will appear in the TABLE

6 & 7 Will. IV. c. 76.

Repealing the statutes relating to newspapers and advertisements, and the duties on the former; and granting other duties and enacting other regulations in lieu. See "ADVERTISEMENTS," "NEWSPAPERS."

1 & 2 Vict. c. 85.

For authorizing the use of stamps in any part of the United Kingdom, wheresoever issued. See "INSTRUMENTS."

2 & 3 Vict. c. 52.
3 & 4 Vict. c. 96.

Granting postage stamp duties. See "POSTAGE STAMPS."

3 & 4 Vict. c. 79.

Attorneys of one court may be admitted in others.

Persons admitted as attorneys in any of the Superior Courts of Dublin, or as solicitors in the Court of Chancery or Exchequer, may be admitted in any other of the said Courts as attorneys or solicitors free of duty.

3 & 4 Vict. c. 108.

For the regulation of municipal corporations in Ireland.

Admission of burgesses exempt.

Sect. 48.—No stamp duty to be payable in respect of the admission, registry, or enrolment of any burgess or freeman according to the provisions of this Act.

No duty on Chancery proceedings under this Act.

Sect. 139.—No proceedings in Chancery relative to the misapplication of property vested in Municipal Corporations, or any Commissioners or Guardians of the poor, acting under this Act for municipal purposes, to be liable to any stamp duty, or charge for Chancery or other Court fund.

4 & 5 Vict. c. 50.

Relative to the returns to be made by banks of their notes in circulation. See page 124.

5 & 6 Vict. c. 79.

Admissions in Inns of Court in England and King's Inns.

Sect. 22.—Where any person is admitted a member of any Inn of Court in England, and a student of King's Inns in Dublin, and has paid the stamp duty on both admissions, the Commissioners may return the duty on the admission in England, on application within six calendar months after the last admission.

5 & 6 Vict. c. 82.

To assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same, until the 10th day of October, 1845.

Repeal of duties on plate; on licences to deal in plate; on deeds, &c.; on transfers of mortgages, and certain bankers' notes; on composition for the duties on bankers' notes.

Sect. 1.—The duties granted upon gold and silver plate wrought in Ireland, by the 47 Geo. III. c. 13, and upon licences to sell or make gold or silver plate in Ireland, by the 55 Geo. III. c. 19, and also all the duties now payable in Ireland granted by the 56 Geo. III. c. 56; and also all the duties upon any transfers of mortgage, and upon certain promissory notes issued by bankers in Ireland, granted by the 3 Geo. IV. c. 117; and also the composition for the duties on notes issued by bankers upon unstamped paper, granted by the 9 Geo. IV. c. 80, to cease and determine, except such as shall have become due and shall remain unpaid, and such as shall remain to be paid in respect of legacies given by way of annuity, or so that the value cannot be ascertained at once, where part of such duties shall have been paid or become payable, and except also the duties chargeable in respect of any certificate of having registered a deputation as a gamekeeper, and any certificate to authorize any person not being a gamekeeper to kill game in Ireland.

New duties as in England.

On deeds, &c., as granted by 55 Geo. III. c. 184.

On plate the same as by 55 Geo. III. c. 185.

Plate licences as by 43 Geo. III. c. 69.

On composition for bankers' notes the same as by 9 Geo. IV. c. 23.

Sect. 2.—Save and except in respect of the articles mentioned in the schedule annexed there shall be granted in Ireland, in lieu of the duties and composition repealed, the duties and composition following; (that is to say,) for and in respect of the several instruments, articles, matters and things mentioned, *mutatis mutandis*, in the schedule to the 55 Geo. III. c. 184, (except the exemptions,) or those of the like nature, in Ireland, or the vellum, parchment, or paper upon which the same shall be written such duties as under the last mentioned Act, or any subsequent Act, are now payable in England; and also for plate of gold and silver made or wrought in Ireland, the duties by the 55 Geo. III. c. 185, granted in respect of plate of gold and silver in Great Britain; and also for licences to sell or make gold or silver plate in Ireland, the duties by the 43 Geo. III. c. 69, granted upon licences to persons trading in gold or silver plate; and also for the promissory notes on unstamped paper issued by any licensed banker in Ireland, or in circulation, the same composition as is payable by bankers in England in pursuance of the 9 Geo. IV. c. 23. And the said schedule annexed to the 55 Geo. III. c. 184, for the purposes of this Act, to be read and taken and considered as if annexed to and part of this Act, and all the instruments, &c. (except as aforesaid) therein mentioned, were, *mutatis mutandis*, mentioned, described, relating to Ireland; and wherever in the said schedule the words "United Kingdom," "United Kingdom of Great Britain and Ireland," "in Great Britain," "in England," "at Westminster," or "in Doctors' Commons," are used, the word "Ireland," or the words "in Ireland," to be substituted, except where such words are consistent with the object and true intent and meaning of this Act, and applicable to the purposes thereof: Provided, that the duties on fire insurances shall be charged in respect of policies and insurances in Ireland granted by any person licensed, and of such as may be lawfully granted or made by persons licensed or not: Provided, that where any instrument in the said schedule, or in the 3 Geo. IV. c. 117, is declared to be exempt from *ad valorem* duty, by reason of the payment in respect of any other instrument of any *ad valorem* duty, such exemption shall extend to instruments of the same description, in cases where any *ad valorem* duty of the like kind granted by the 56 Geo. III. c. 56, or any Act in that behalf therein mentioned, or this Act, shall have been paid in respect of any such other instrument: Provided also, that in the cases of sub-sales under the head "conveyance" the sub-purchasers, and the persons immediately selling to them, shall be deemed to be purchasers and sellers within the provisions of the 56 Geo. III. c. 56: Provided also, not to exempt any bills or notes of the Bank of Ireland, except under any contract authorized by the laws in force: Provided also,

Fire insurance.

As to deeds exempt where duty already paid.

Sub-purchasers.

Bank bills and notes.

Repealed duties

not to be charged.

not to make payable in Ireland any of the duties repealed, or ceased to be payable in England; and that where any of the duties have been repealed, and other duties granted in lieu, such last mentioned duties be the duties payable in Ireland: Provided also, that releases and other conveyances of annuities or rent-charges made in the original grant subject to be redeemed or re-purchased, shall on the reconveyance be exempted from the *ad valorem* duty on conveyances and shall be charged only with the ordinary duty on deeds.

Releases of annuities.

Certain indentures of apprenticeship exempted.

Sect. 3.—Indentures of apprenticeship in Ireland, where there is no consideration exceeding 10*l.* and all assignments of such indentures with no such consideration to be exempt from stamp duty: not to extend to articles of clerkship to attorneys or others, which are specifically charged.

Marriage licences.

Sect. 4.—No licence for marriage in Ireland, if not special, shall be liable to any stamp duty.

Arbitration bonds and awards.

Sect. 5.—So much of the 5 & 6 Will. IV. c. 64, as exempts from duty, instruments, whereby persons become bound or agree to submit any matter in dispute to arbitration, and also all awards made in pursuance of such submission to be repealed, where the matter in dispute is of the value of 20*l.* or upwards.

Sect. 6.—Certain other duties, as specified in a schedule annexed, are granted by this section. These duties are all contained in the TABLE.

Duties to be under the Commissioners.

Salaries.

Discounts.

Sect. 7.—The several duties and composition for duties by this Act granted to be under the Commissioners of Stamps and Taxes, and be deemed to be stamp duties, and, except as after is mentioned, all moneys to arise therefrom to be paid into the receipt of the Exchequer in Dublin, and carried to the Consolidated Fund: Provided, that such sums of money may be expended for salaries or other incidental charges, as shall be necessary for collecting and managing such duties: Provided, that the like discounts or allowances and drawbacks as in England, are to be allowed in Ireland: Provided also, that all such duties, discounts, &c., and all sums according to the amount whereof the same are imposed or to be ascertained, shall be paid and computed in the currency of the United Kingdom.

Part of certain duties to be paid to the Treasurer of King's Inns.

Sect. 8.—The Commissioners to keep a distinct account of the sum of 10*l.*, part of the duty of 25*l.* on the admission of any student into the Society of King's Inns, and of 50*l.* on the admission to the Degree of a Barrister, and of the sum of 14*l.* part of the duty of 120*l.* upon articles binding an apprentice or a clerk to an attorney, and the Treasury to cause the same to be paid to the treasurer of the said society.

Commissioners to provide dies.

Sect. 9.—The Commissioners to provide dies for denoting the duties and the rate *per cent.* of the legacy duties, and may use any dies provided to denote former duties, and also two or more for denoting any one duty, as occasion may require: Provided, that no die appropriated to denote the duty on any particular description of instrument, by bearing the name on the face thereof, be used for denoting any duty on any other instrument, or, if so used, to be of no avail.

Provisions of former Acts to extend to this Act.

Sect. 10.—All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties, in force in Ireland, in Acts relating to the duties repealed, and to any prior duties of the same kind or description, to be of full force and effect with respect to the duties hereby granted, so far as not superseded by and as are consistent with this Act, for collecting, &c., the said duties hereby granted, and for the preventing, detecting, and punishing of all offences relating thereto.

Paper already stamped.

Sect. 11.—Vellum, parchment, or paper stamped under any Act in force immediately before the passing of this Act, may be used for any instrument hereby charged with any duty.

Penalties on stamping deeds, as in England.

Sect. 12.—In every case where a penalty is now by law payable in Ireland on stamping any instrument, such penalty shall be in amount the same as any penalty or penalties by law payable in England on stamping any instrument of the like description, in lieu of the penalty or penalties now payable in Ireland.

Sect. 13.—All bonds and securities given for or relating to any duty repealed, or composition, to continue in force for securing also the duties and compositions by this Act granted: Provided, that the Commissioners or their proper officer may require fresh bonds or securities to be given.

Bonds to remain in force.

Sect. 14.—This Act not to revoke or annul any certificate or licence which shall have been granted.

Licences to continue.

Sect. 15.—Every notary public in Ireland shall annually, before he shall act, deliver at the Stamp Office in Dublin a paper or note in writing containing his name and usual place of residence, and stating whether he has been admitted or enrolled or has acted as a notary public three years or not; and upon payment of the duty he shall be entitled to a certificate, duly stamped to denote the payment of the said duty, describing him according to the description in the said note, such certificate to bear date on the day on which it is issued, and be in force until the 25th March next following; and if any person act as a notary public, or do or perform any notarial act whatever, without having obtained and having such certificate then in force, he shall forfeit 50*l.* and be incapable of maintaining any action or suit for the recovery of any fee, reward, or disbursement on account of any business done without having such certificate.

Notaries to take out certificates.

Penalty for acting without.

Sect. 16.—If any notary public, or any attorney, solicitor, proctor, agent, or procurator, or any sworn clerk, clerk in court, or other clerk or officer required by law to take out an annual certificate, shall deliver in, at the Stamp Office, any note containing a place of residence which shall not be true, or containing any statement, matter, or thing not true, with intent to evade the payment of the higher duty on certificates, he shall forfeit 50*l.*: Provided that, to prevent evasion, if any person shall ordinarily carry on his business within the city of Dublin, or within the distance of three miles therefrom, or shall, for the space of forty days or more in any one year, reside within the limits aforesaid he shall be deemed to be resident within such limits, and be liable to the higher duties, and any certificate taken out upon payment of a lower duty than ought to be paid shall not be deemed to be a certificate, but shall be null and void.

Notary or attorney, &c., delivering in a false note, to forfeit 50*l.*

What shall be deemed a residence within the limits requiring the higher duties.

Sect. 17.—The Commissioners, or any person duly authorized by them, may grant licence to use or exercise the business of a pawnbroker in any city, town, or place in Ireland, or the calling or occupation of an appraiser in Ireland; and no person to use or exercise the trade or business of a pawnbroker, or the calling or occupation of an appraiser, without a licence; and every such licence granted at any time after the 31st July and before the 1st September in any year to be dated on the 1st August; if granted at any other time to be dated on the day on which the same shall be granted; every licence to be in force until and upon the 31st July then next following; and if any person, not having a licence in force receive or take by way of pawn, pledge, or exchange any goods or chattels for the repayment of money lent thereon, he shall forfeit 50*l.*; and all persons who shall receive or take by way of pawn, pledge, or exchange any goods or chattels for the repayment of money lent thereon shall be deemed pawnbrokers: Provided, not to extend to any person who shall lend money at interest not exceeding 5*l. per cent. per annum*, without taking any further or greater profit.

Licences to pawnbrokers and appraisers.

Penalty on pawnbrokers acting without licence.

Who deemed pawnbrokers.

Sect. 18.—No pawnbroker by virtue of one licence to keep more than one house, shop, or other place for taking in goods; but for every house, shop, or other place, a separate licence to be taken out: Provided, that persons in partnership, and carrying on the trade and business in one house, shop, or tenement only, shall not be obliged to take out more than one licence.

One house only under one licence. One licence only for partners.

Sect. 19.—All the provisions, &c., of the 46 Geo. III. c. 43, relating to appraisements and licences to appraisers in Great Britain, and to the duties thereon to be of full force and effect with respect to the same in Ireland and be put in execution for raising, levying, collecting, and securing the said duties in Ireland.

46 Geo. III. c. 43, to extend to Ireland.

Licences to deal in stamps, and to keep printing presses to be permanent.

Sect. 20.—The Commissioners may grant licences to deal in stamps in Ireland, and to keep printing presses and types for printing in Ireland, as they may now grant an annual licence for any such purpose; every such licence to continue in force until revoked and made void, or surrendered or determined by death; the provisions contained in any Act relating to any such annual licences, and to the persons to whom the same are granted, to relate to the licences to be hereafter granted, and to the persons to whom the same shall be granted, and be observed accordingly: Provided, that the said Commissioners may revoke any such licence.

Sea insurances, 55 Geo. III. c. 101, repealed.

Sect. 21.—So much of the 55 Geo. III. c. 101, as relates to the duties upon sea insurances, and to the collecting and accounting for the same, is hereby repealed.

Commissioners to provide stamped policies.

Sect. 22.—The Commissioners to provide vellum, parchment, or paper adapted for policies of sea insurance, and to print thereon the several forms for blank policies commonly used, and such others as they may think proper, the same to be duly stamped, in order that persons may buy the forms at the price of the duty; or at their election, may bring their own vellum, &c., to be stamped; and the officers employed by the said Commissioners are required to write or mark thereon the day, month, and year when any such printed vellum, &c., so stamped shall be delivered by them to be used, and for any neglect the officer to forfeit 100*l.*, and be liable to be dismissed: Provided, that the Commissioners shall not be required to provide, at the public charge, any vellum or parchment, where the sum to be insured thereon shall not amount to 5000*l.* or upwards.

Contracts for insurance to be written, and particulars expressed.

Sect. 23.—Every agreement made for any insurance in respect whereof any duty is payable shall be printed or written, and be deemed a policy; and the premium, or consideration contracted for, and the particular risk or adventure insured against, together with the names of the subscribers and underwriters, and sums insured, shall be expressed in or upon such policy, and, in default, such insurance shall be void.

No policy for more than a year.

Sect. 24.—No policy of insurance upon any ship, or upon any interest therein, shall be made for any certain term longer than twelve calendar months; if made for any longer term to be void.

Alterations in policies may be made.

Sect. 25.—Nothing herein to extend to prohibit the making of any alteration which may lawfully be made in any policy duly stamped, or to require any additional stamp duty by reason of such alteration, so that such alteration be made before notice of the determination of the risk, and the premium exceed 10*s. per cent.*, and so that the thing insured remain the property of the same person, and such alteration do not prolong the term insured beyond the period allowed by this Act, and no additional sum be insured.

No policy available unless stamped.

Sect. 26.—No contract for such insurance shall be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it be duly stamped; and the Commissioners, or any of their officers shall not stamp any vellum, &c., for denoting the duty after any such insurance or contract shall be written, under any pretence whatever: Provided, that they may stamp with any additional stamp any mutual insurance, whereby divers persons agree to insure one another, without any premium, although such policy may have been previously signed or underwritten: Provided, that it shall not have been underwritten to an amount exceeding the sum which the stamp thereon will warrant.

Nor any policy to be stamped after it is written, except policies of mutual insurance.

Penalty for making insurance, &c., unless the contract be stamped.

Sect. 27.—Every person who shall make or effect, or knowingly procure to be made or effected, any insurance on any ship, or on any property on board of any ship, or the freight, or any other interest in or relating to any ship, or shall give or pay, or agree to give or pay, or render himself liable to pay, any money, premium, or consideration whatever in the nature of a premium, for or upon any such insurance, or shall enter into any contract or agreement whatever for any such insurance, unless the same be written on vellum, &c., duly stamped,

shall forfeit 500*l.*; and every person negotiating or transacting any such insurance, contrary to this Act, or writing, or causing to be written any agreement for any such insurance upon vellum, &c., before it is duly stamped, shall also forfeit 500*l.*

Brokerage, &c., not a legal charge, unless the insurance be stamped.

Sect. 28.—No person transacting, making, or negotiating any such insurance shall charge or set against his employer any sum of money for brokerage or agency, or for his pains or labour, or for any money expended or paid by way of premium, or consideration, for such insurance, unless the same shall be written on vellum, &c., duly stamped; and money paid on any such account to any person transacting, making, or negotiating any insurance contrary to this Act, shall be deemed to be paid without consideration, and shall remain the property of such employer.

Penalty on assurers, unless insurances be properly stamped.

Sect. 29.—If any person become an assurer upon, or underwrite any such insurance, or shall receive or contract for any premium or consideration for any such insurance, or pay or allow in account, or agree to pay or allow in account, or otherwise, any money upon any loss, &c., relating to any such insurance, unless such insurance shall be written upon vellum, &c., duly stamped, or if any person be concerned in any fraudulent contrivance or device with intent to evade the duties on any policy of insurance, he shall forfeit 500*l.*

Allowance of sea policy stamps to be made as in Great Britain.

Sect. 30.—The Commissioners may allow stamps on policies of sea insurance in Ireland, in the same cases and upon the same terms and conditions only as are provided in the 54 Geo. III. c. 133, in Great Britain; the provisions contained in the said Act to be of full force and effect with respect to the stamps on policies of sea insurance in Ireland.

Bankers' notes may be re-issued.

Sect. 31.—Any banker who may by law issue promissory notes for money payable to the bearer on demand, and allowed by law to be re-issued, may re-issue any such notes duly stamped with the duties by this Act granted, as often as he shall think fit, without being liable to any further duty.

The duty on a lease for a year to be denoted upon lease.

Sect. 32.—The duty (except the progressive duty) in respect of a bargain and sale or lease for a year, where no such bargain and sale or lease is executed, to be denoted upon the release; and no recital in or upon any release dated or first executed by any party after the commencement of this Act, to be evidence of any bargain and sale having been made unless the release be duly stamped for denoting such duty as well as the duty which such release may be otherwise chargeable with.

A certificate to be written on deeds to be registered or enrolled of the quantity of words contained in them.

Sect. 33.—Reciting that by the 56 Geo. III. c. 56, a penalty of 50*l.* is imposed for registering or enrolling an instrument not duly stamped. It is enacted, that before any instrument subject to any duty shall be delivered to be registered, or enrolled, the person employed to prepare it, or, if there shall be no such person, then one of the parties, shall write upon it and sign a memorandum that the words contained in such instrument are less in number than a certain quantity specified, either in gross or in folios of seventy-two words each; and if such instrument be stamped with the proper progressive duty according to such memorandum such instrument may be registered or enrolled, notwithstanding the same may in fact contain a greater quantity of words; and the Registrar, or other person, shall not be liable to the said penalty of 50*l.* in respect thereof (provided such instrument be duly stamped in other respects);

Penalty for writing false certificate, 50*l.*

and if any person shall write or sign any memorandum as aforesaid which shall specify any quantity of words less than the quantity contained in such instrument, and in any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, with intent to evade the payment of any duty, he shall forfeit 50*l.*

Bills of lading and charter-parties.

Sect. 34.—Bills of lading not to be stamped after they are written; nor charter-parties except as therein provided in Great Britain or Ireland. Penalty for making or signing any unstamped bill of lading 50*l.* See the clause, at page 196, *ante*.

Taking possession.

Sect. 35.—Penalty for taking possession of a deceased person's property and

sion of property and not proving will.

not proving the will or taking out administration within six months, 100*l.* and 10*l. per cent.* on the duty. The same as in England. See 55 Geo. III. c. 184, s. 37, page 596, *ante.*

Denoting stamp for second probate.

Sect. 36.—A stamp to be provided for marking probates, &c., relating to any estate in respect whereof probate, &c., shall have been before taken out and the proper duty paid thereon. The same as in England. See 41 Geo. III. c. 86, s. 3, page 593, *ante.*

By whom the duty on legacies is to be paid.

Sect. 37.—The duties on legacies and residues of personal estate to be paid by the executor or administrator on retainer, or payment or satisfaction of any such legacy or residue, and to be a debt due to the Queen from him; and if, on paying or satisfying any legacy or residue, the duty be not deducted, the same to be a debt due, also, from the person to whom payment or satisfaction is made. And in the case of legacies charged on real estate, the duty is to be paid by the trustee of the real estate; but if there be no trustee, then by the owner. These provisions are the same as the 36 Geo. III. c. 52, s. 6, as to personal estate in England, and 45 Geo. III. c. 28, s. 5, as to real estate. See pages 631 and 641, *ante.*

What shall be deemed a legacy.

Sect. 38.—This section declares what shall be deemed a legacy; it is superseded by the 8 & 9 Vict. c. 76, s. 4 [see page 642]. The value of any legacy given by way of annuity, for any life or lives, or for years or other period of time, shall be calculated, and the duty chargeable thereon shall be charged according to the Tables annexed to the 36 Geo. III. c. 52: Provided, that nothing herein contained shall extend to charge with duty any legacy given for the education or maintenance of poor children in Ireland, or to be applied in support of any charitable institution in Ireland, or for any purpose merely charitable.

Value of annuities, how to be calculated.

Exemption as to charities.

Receipts for legacies, when to be stamped.

Sect. 39.—Receipts for legacies to be brought to be stamped within 21 days; and after that period and within three calendar months they may be stamped on payment of the duty and 10*l. per cent.* thereon by way of penalty. The clause is copied from the 36 Geo. III. c. 52, s. 29 (see page 636, *ante*), omitting the express prohibition (not necessary) against stamping any receipt after three months; and containing a power to remit the penalty where the receipt, if signed out of the United Kingdom, is brought to be stamped within 21 days after it is received in the kingdom.

Penalties may be sued for as penalties under Stamp Act.

Sect. 40.—All penalties under this Act may be recovered, with full costs of suit, and all charges attending the same, by the ways and means and in manner and form provided for the recovery of any penalty by the 56 Geo. III. c. 56.

Construction of terms used in this Act.

Sect. 41.—Words used in this Act importing the singular number or the masculine gender only, to include several persons, females, bodies politic or corporate, and several matters or things, unless otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Continuance of the Act.

Sect. 43.—This Act and the duties imposed to continue in force until the 10th of October, 1845, and then to cease, except as to duties and penalties then due and incurred. Continued by 8 & 9 Vict. c. 2, and 11 Vict. c. 9.

6 & 7 Vict. c. 72.

For exempting from stamp duty bonds entered into on obtaining marriage licences in Ireland (which bonds are by the 7 & 8 Vict. c. 81, altogether dispensed with); and also certain releases of freehold property in respect of the leases for a year therein mentioned. See TABLE.

7 Vict. c. 21.

To reduce the duties on policies of sea insurance, agreements, and letters of attorney (proxies), in certain cases, and to repeal the duties on bonds relating to obtaining drawbacks. See TABLE. With special provisions for securing the reduced duties; for which see those several heads.

Sect. 9.—Repealing 55 Geo. III. c. 101, s. 30, requiring public notaries to render accounts of bills and notes noted by them.

7 & 8 Vict. c. 76.

To simplify the transfer of property. See "INSTRUMENTS."

8 & 9 Vict. c. 2.

To continue for three years, from the 10th October, 1845, the duties granted by the 5 & 6 Vict. c. 82. See 11 Vict. c. 9, *post*.

8 & 9 Vict. c. 37.

To regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service.

Joint-stock banks in Dublin, &c.

Sect. 1.—Any persons exceeding six in number united in societies or partnerships, or any bodies politic or corporate, may carry on the business of bankers at Dublin, and within fifty miles, as beyond that distance.

Issue of notes by bankers to be limited.

Sect. 8.—The average notes in circulation of bankers claiming to issue bank notes to be ascertained by the Commissioners of Stamps and Taxes, and certified by them; and every such banker may continue to issue his bank notes to the extent of the amount so certified, and of the amount of the gold and silver coin held by him, in the proportion and manner hereinafter mentioned, but not to any further extent; and after the 6th Dec. 1845, no banker shall make or issue bank notes in Ireland, except only such as shall have obtained such certificate.

United banks.

Sect. 9.—Where banks have united they may issue to the extent of the average of both banks.

Certificate to be published in the Gazette, and be evidence.

Sect. 10.—The Commissioners shall publish a duplicate of their certificate in the Dublin Gazette; which shall be conclusive evidence of the amount of notes which the banker is authorized to have in circulation exclusive of an amount equal to the monthly average of gold and silver coin held by such banker as herein provided.

Banks united in future.

Sect. 11.—Where banks in future become united by written contract, the Commissioners may certify the aggregate of the amount of notes which such separate banks were previously authorized to issue; such certificate to be published as before directed; and the amount therein stated to be the limit of the amount of notes which such united bank may have in circulation, exclusive of an amount of the gold and silver coin as aforesaid.

Banks may relinquish the privilege in

Sect. 12.—Any banker entitled to issue bank notes may contract with the Bank of Ireland for the relinquishment of the privilege in favour of the said bank, a copy of the agreement to be transmitted to the Commissioners, who

favour of the Bank of Ireland; are to certify the aggregate of the amount of notes which the Bank of Ireland and such banker were previously authorized to issue under their separate certificates; such certificate to be published, and the amount therein to be the limit of the amount of notes which the Bank of Ireland may have in circulation, exclusive of the amount of coin as aforesaid.

but not resume the issue. Sect. 13.—No banker who shall have so agreed to relinquish the privilege of issuing notes shall at any time thereafter issue any such notes.

Limitation of bank notes in circulation. Sect. 14.—No banker in Ireland shall have in circulation, upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than an amount composed of the sums certified by the Commissioners aforesaid, and the monthly average of gold and silver coin held by such banker during the same period of four weeks, to be ascertained in manner after mentioned.

No notes for fractions of a pound. Sect. 15.—All bank notes to be issued or re-issued in Ireland shall be expressed to be for payment of a sum in pounds sterling, without fractional parts, under a penalty of 20*l.*

Issuing banks to render accounts weekly. Sect. 16.—Every banker who shall issue bank notes shall, on some one day in every week, to be fixed by the Commissioners, transmit to them a true account of the amount of his bank notes in circulation at the close of the business on the next preceding Saturday, distinguishing the notes of 5*l.* and upwards, and the notes below, and also an account of the total amount of gold and silver coin held by him at each of his head offices or principal places of issue, and also an account of the total amount of gold and silver coin held by him; and on completing every period of four weeks shall annex the average amount of bank notes in circulation during the said four weeks, distinguishing as aforesaid, and the average amount of gold and silver coin at each office or place of issue, and also the amount of bank notes which such banker is authorized to issue, such account to be verified by the signature of such banker or his chief cashier, or in the case of a company or partnership by the signature of the chief cashier or other officer duly authorized by the directors, and be made in the form to the Act annexed, marked (A.); and for any neglect, or for rendering a false account, to forfeit 100*l.*

What deemed in circulation. Sect. 17.—All bank notes to be deemed to be in circulation from the time the same shall have been issued until actually returned.

Commissioners to make a monthly return. Sect. 18.—From the returns so made, the Commissioners at the end of the first and each successive period of four weeks to make out a general return in the form to the Act annexed, marked (B.), of the monthly average amount of bank notes in circulation of each banker, and of all the gold and silver coin held by such banker, and certifying, under the hand of any officer duly authorized, whether such banker has held the amount of coin required by law, and publish the same in the Dublin Gazette.

Sect. 19.—This section states the mode of ascertaining the monthly average by the Commissioners.

What to be taken in the account of coin held. Sect. 20.—In taking account of the coin held by any banker, with respect to which bank notes to a further extent than the sum certified may be issued, there shall be included only the coin held by such banker at his several head offices or principal places of issue, not exceeding four in number, of which not more than two shall be situated in the same province; notice in writing to be given to the Commissioners, on or before the 6th of December next, of such head offices or places; no amount of silver coin exceeding one fourth of the gold coin held by such banker to be taken into account.

Books of bankers to be inspected with consent of the Treasury. Sect. 21.—All books of any banker who shall issue bank notes in which shall be entered any account, minute, or memorandum of or relating to the bank notes issued, or the gold or silver coin held by such banker, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts, or to test the truth of any such account, shall be open for the inspection of any officer of stamp duties authorized by the Com-

missioners; every such officer to be at liberty to take copies of or extracts from any such book or account, and to inspect and ascertain the amount of coin held by such banker; and for any refusal, such person to forfeit 100*l.*: Provided, that the Commissioners shall not exercise these powers without the consent of the Treasury.

Bankers to return their names once a year to the Stamp Office.

Sect. 22.—Every banker, other than the Bank of Ireland, on the first day of January in each year, or within fifteen days after, to make a return to the Commissioners of his name, residence, and occupation, or of the name, residence, and occupation of every member of the company or partnership, and also the name of the firm under which he or they carry on business, and of every place where such business is carried on; and for default to forfeit 50*l.*; the Commissioners on or before the first day of March in every year to publish in the Dublin Gazette a copy of the return.

Penalty on exceeding average.

Sect. 23.—If the monthly average circulation of bank notes of any banker shall at any time exceed the amount which he is authorised to issue and have in circulation he shall forfeit a sum equal to that by which such average shall have exceeded that which was authorised.

Notes for less than 20*s.* not negotiable.

Sect. 24.—All promissory or other notes, bills, drafts, orders, or undertakings, being negotiable or transferable, for the payment of any sum, or for the delivery of any goods, specifying their value less than 20*s.* in the whole, to be absolutely void; and any person who shall publish or utter any such notes, bills, drafts, or engagements, or negotiate or transfer the same, shall forfeit not exceeding 20*l.* nor less than 5*l.*, at the discretion of the justice who shall determine the offence.

Notes for 20*s.* and above, and less than 5*l.*, to be drawn in certain form.

Sect. 25.—All notes, bills, drafts, or undertakings, being negotiable or transferable, for 20*s.* or above, and less than 5*l.*, or on which any such sum shall remain undischarged, shall specify the names and places of the payees, and bear date before or at the time of drawing or issuing, and be made payable within twenty-one days after date, and shall not be transferable or negotiable after the time hereby limited for payment, and every indorsement shall be made before the expiration of that time, and bear date at or not before the time of making, and specify the name and place of abode of the person to whom or to whose order the money is to be paid; and the signing of every such note, &c., and of every such indorsement, shall be attested by a subscribing witness; and which said notes, &c., may be made or drawn in words to the purport or effect set out in the schedules annexed; and all notes, &c., being negotiable or transferable for 20*s.* or above, and less than 5*l.*, or on which 20*s.* or above, and less than 5*l.*, shall remain undischarged, issued in any other manner than as aforesaid; and also every indorsement, other than as aforesaid, shall be absolutely void; not to extend to such bank notes as shall be lawfully issued by any banker authorised by this Act to continue the issue of notes.

Notes on demand for less than 5*l.* not to be issued.

Sect. 26.—If any body, or any person, make, sign, issue, or re-issue any promissory note payable on demand to the bearer thereof for less than 5*l.*, except the bank notes of bankers authorised to continue to issue bank notes as aforesaid, such body or person shall for every such note forfeit 20*l.*

Penalty for unlawfully uttering notes, &c., for less than 5*l.*

Sect. 27.—If any body or person shall publish, utter, or negotiate any note, (not being the bank note of a banker authorised to continue to issue bank notes), or any bill, draft, or undertaking, being negotiable or transferable, for 20*s.* or above, and less than 5*l.*, or on which 20*s.* or above, and less than 5*l.* remain undischarged, made, drawn, or indorsed in any other manner than before directed, to forfeit 20*l.*

Not to prohibit checks.

Sect. 28.—Not to prohibit any draft or order drawn by any person on his banker, for the payment of money to his use.

By whom penalties to be sued for.

Sect. 29.—Penalties under this Act may be sued for in the name of the Attorney-General or Solicitor-General, or the solicitor of stamps, or of any person authorised by the Commissioners, or in the name of any officer of stamp duties, in the Exchequer, or by civil bill in the Court of the recorder, chairman, or assistant-barrister, or in respect of any penalty not exceeding 20*l.*, by infor-

Commissioners may mitigate penalties.

mation or complaint before a justice of the peace as any other penalties relating to stamp duties; and the Commissioners, either before or after any proceedings, may mitigate or compound any such penalty, and stay proceedings as they think fit, and may give any portion of the penalty to the informer.

8 & 9 Vict. c. 76.

Increasing the duties on licences to appraisers in Great Britain and Ireland; and repealing the duties in respect of searches in the office for the registry of deeds in Ireland, and granting others in lieu. See TABLE.

Sect. 4.—What shall be deemed legacies. See "LEGACY DUTIES."

8 & 9 Vict. c. 106.

To amend the law of real property. See "INSTRUMENTS."

8 & 9 Vict. c. 119.

To facilitate the conveyance of real property. See "INSTRUMENTS."

9 & 10 Vict. c. 60.

To exempt certain bonds and warrants of attorney from stamp duty. See "*Exemptions*," under title "BOND," in the TABLE.

11 Vict. c. 9.

To continue for three years, from 10th October, 1848, the duties granted by 5 & 6 Vict. c. 82.

13 & 14 Vict. c. 97.

Repealing certain stamp duties and granting others; and to amend the laws.

14 & 15 Vict. c. 18. 15 & 16 Vict. c. 21.

Further continuing the duties granted by the 5 & 6 Vict. c. 82.

15 & 16 Vict. c. 83. 16 Vict. c. 5.

Granting stamp duties on letters patent.

16 & 17 Vict. c. 51.

Granting duties on successions.

16 & 17 Vict. c. 59.

Repealing certain stamp duties and granting others, and amending the laws, and making perpetual the duties granted by the 5 & 6 Vict. c. 82.

16 & 17 Vict. c. 63.

Repealing certain stamp duties and granting others in lieu, and amending the laws.

16 & 17 Vict. c. 71.

Amending the law relating to newspapers.

16 & 17 Vict. c. 107, ss. 114, 115, 116 (Customs Act).

To prevent frauds in respect of playing cards.

STATUTES GRANTING STAMP DUTIES IN GREAT BRITAIN OR OTHERWISE RELATING THERETO.

5 Will. & M. c. 21—Granting stamp duties for four years.
6 Will. III. c. 6—Stamp duties on marriages, births and burials, &c., for five years.
6 Will. III. c. 12—For explaining certain of the said duties.
7 Will. III. c. 35—For enforcing the laws as to marriages, &c.
8 Will. III. c. 20—The duties granted by 5 Will. & M. continued until 1st Aug. 1706.
9 Will. III. c. 25—Additional duties on things specified in 5 Will. & M. granted from 1st Aug. 1698, for ever.
9 Will. III. c. 44—The moneys under the last Act to be kept distinct.
1 Ann. stat. 1, c. 13—The duties granted by 5 Will. & M. further continued till 1st Aug. 1710.
1 Ann. stat. 2, c. 22—For preventing frauds.
4 Ann. c. 12—Explaining as to the duties on appearances.
4 Ann. c. 16, s. 20—Providing for the stamping of assignments of bail bonds.
5 Ann. c. 8—Act of Union—Scotland not to be charged with the present duties.
5 Ann. c. 19—The duties granted by 5 Will. & M. continued from 1st Aug. 1710, for ninety-six years.
6 Ann. c. 5—Continued for one year more, to be paid throughout Great Britain.
8 Ann. c. 9, s. 12—Duties granted on premiums with apprentices for five years.
9 Ann. c. 21, s. 7—The last-mentioned duties made perpetual.
9 Ann. c. 23—Duties on debentures, bills of lading, almanacks, cards and dice granted for thirty-two years.
10 Ann. c. 19—Duties on surrenders in England, certain instruments in Scotland, transfers of stock in companies, newspapers, pamphlets and advertisements for thirty-two years.
10 Ann. c. 26—Duties on policies of insurance within the bills of mortality, for thirty-two years.
13 Ann. stat. 1, c. 2—Explaining as to duties on copyhold surrenders and admittances.
12 Ann. stat. 2, c. 9—Additional duties on deeds, &c., for thirty-two years.
1 Geo. I. stat. 2, c. 12—The duties continued by 5 Ann. and 6 Ann. made perpetual.
3 Geo. I. c. 7—The duties granted by 9 Ann. and 10 Ann. cc. 19 and 26, made perpetual.
5 Geo. I. c. 19—Regulations relating to card duties.
6 Geo. I. c. 4—The duties granted by 12 Ann. made perpetual.
6 Geo. I. c. 21 } As to proof of person being an officer.
11 Geo. I. c. 30 }
11 Geo. I. c. 8—As to duties on newspapers.
12 Geo. I. c. 33—Duties on law proceedings, granted for sixteen years.
2 Geo. II. c. 23—Duties on admissions of solicitors for nine years.
9 Geo. II. c. 32—The duties granted by 12 Geo. I. continued for four years more.
11 Geo. II. c. 19—As to stamping assignments of replevin bonds.
12 Geo. II. c. 13—The duties granted by 2 Geo. II. continued till 1748.
16 Geo. II. c. 26—For apprehending hawkers of unstamped newspapers.
18 Geo. II. c. 22—Relating to the duties on indentures of apprenticeship.
20 Geo. II. c. 45—The like.
22 Geo. II. c. 46—Continuing the duties granted by 2 Geo. II. till 1757.

23 Geo. II. c. 25—Duties granted by 12 Geo. I. c. 33, revived and made perpetual.
23 Geo. II. c. 26—Relating to the admission of attorneys.
29 Geo. II. c. 12—Granting additional duties on ale licences.
29 Geo. II. c. 13—The like on cards, dice, &c.
30 Geo. II. c. 19—The like on deeds, newspapers, advertisements, and almanacks. The duties granted by 2 Geo. II. c. 23, made perpetual.
31 Geo. II. c. 31—Relating to wine licences.
32 Geo. II. c. 19—Explaining 30 Geo. II.
32 Geo. II. c. 35—Granting duties on law proceedings.
2 Geo. III. c. 36—Granting additional duties on admissions to Inns of Court and registers of barristers.
5 Geo. III. c. 35—Explaining 12 Ann. and 30 Geo. II.
5 Geo. III. c. 46—The duties on admissions granted by 5 Will. & M. and 9 Will. III. repealed, and others granted in lieu.
5 Geo. III. c. 47—Granting additional duties as in 2 Geo. III.
6 Geo. III. c. 40—Explaining and amending 5 Geo. III. c. 46.
7 Geo. III. c. 44—As to the duties on sea policies.
8 Geo. III. c. 25—The like.
12 Geo. III. c. 48—For preventing frauds.
13 Geo. III. c. 65—Explaining 11 Geo. I. c. 8, and 30 Geo. II., as to newspapers.
16 Geo. III. c. 34—Additional duties on deeds, &c., cards, and newspapers.
17 Geo. III. c. 50—The like on deeds, &c.
19 Geo. III. c. 56—Altering last Act.
19 Geo. III. c. 66—Additional duties on deeds, &c.
20 Geo. III. c. 28—The like on advertisements and legacy receipts.
20 Geo. III. c. 51—Duties on post horses and stage carriages.
21 Geo. III. c. 56—Additional duties on almanacks.
22 Geo. III. c. 33—Duties on bills and notes.
22 Geo. III. c. 47—Lotteries.
22 Geo. III. c. 48—Duties on fire insurances.
23 Geo. III. c. 49—Repealing 22 Geo. III. c. 33, and granting other duties on bills and notes.
23 Geo. III. c. 58—Additional duties on deeds, &c., with repeal of exemptions as to turnpike mortgages, &c.
23 Geo. III. c. 62—Duties on medicines.
23 Geo. III. c. 67—Duties on registry of burials, marriages, births and christenings.
24 Geo. III. c. 7—Explaining duties granted by 23 Geo. III. c. 49.
24 Geo. III. c. 30—Additional duties on licences for retailing beer, &c.
24 Geo. III. sess. 2, c. 31—Post-horse duties, and horse-dealers' licence duties.
24 Geo. III. c. 51—Duties on licences for retailing hats.
24 Geo. III. c. 52—The like on gold and silver plate.
25 Geo. III. c. 48—The like on pawnbrokers' licences.
25 Geo. III. c. 50—The like on game certificates.
25 Geo. III. c. 51—The like on post horses and stage coaches.
25 Geo. III. c. 55—The like on licences for selling gloves.
25 Geo. III. c. 64—Altering 24 Geo. III. c. 53.
25 Geo. III. c. 75—Extending duties on registry of burials, &c., to Protestant dissenters.
25 Geo. III. c. 79—Repealing 23 Geo. III. c. 62, and granting new duties on medicines.
25 Geo. III. c. 80—Duties on attorneys' certificates, &c.
26 Geo. III. c. 48—The like on law proceedings in Scotland.
26 Geo. III. c. 49—The like on perfumery, &c.
26 Geo. III. c. 74—The like on sweets.
26 Geo. III. c. 77—For repayment of certain duties on horses.

26 Geo. III. c. 82—Relating to prosecutions as to stamp duties, repealing the duties on insurances of foreign property; and explaining as to the duties on the transfer of Bank and South Sea stocks.
27 Geo. III. c. 1—Lotteries.
27 Geo. III. c. 13—For preventing the multiplication of stamps.
27 Geo. III. c. 26—Post-horse duties.
28 Geo. III. c. 28—Exempting certain licences to stipendiary curates.
29 Geo. III. c. 49—Horse-dealers' licences.
29 Geo. III. c. 50—Additional duties on newspapers, advertisements, cards, and dice.
29 Geo. III. c. 51—The like on probates and legacy receipts.
30 Geo. III. c. 23—Post-horse duties.
30 Geo. III. c. 31—Altering 12 Geo. III. c. 26 (Goldsmiths' Act), and 24 Geo. III. c. 53, as to plate.
30 Geo. III. c. 38—Repealing the duties on wine licences, &c., and granting other (Excise) duties in lieu.
31 Geo. III. c. 21—Additional duties on game certificates.
31 Geo. III. c. 25—Duties on bills and receipts.
32 Geo. III. c. 50—Exempting certain Customs bonds.
32 Geo. III. c. 51—Exempting certain letters.
32 Geo. III. c. 57—Exempting assignments of parish apprentices.
33 Geo. III. c. 71—Post-horse duties.
34 Geo. III. c. 14—Duties on articles of clerkship.
34 Geo. III. c. 72—As to stamping paper for newspapers.
35 Geo. III. c. 30—Additional duties on deeds, law proceedings, &c.
35 Geo. III. c. 49—Duties on hair powder and armorial bearings.
35 Geo. III. c. 55—Additional duties on receipts.
35 Geo. III. c. 63—Duties on sea insurances.
36 Geo. III. c. 52—Duties on legacies.
36 Geo. III. c. 84—Post horses.
36 Geo. III. c. 125—Duties on hats.
37 Geo. III. c. 16—Additional duties on stage coaches.
37 Geo. III. c. 19—Progressive duties on deeds, &c.
37 Geo. III. c. 60—Amending 34 Geo. III. c. 14.
37 Geo. III. c. 90—Additional duties on deeds, &c.
37 Geo. III. c. 111—The like on deeds.
37 Geo. III. c. 135—Explaining 36 Geo. III. c. 52.
37 Geo. III. c. 136—As to stamping deeds, &c.
38 Geo. III. c. 24—Repealing the duties on watch cases.
38 Geo. III. c. 53—Hair powder and armorial bearings.
38 Geo. III. c. 56—Repealing certain duties on licences to stipendiary curates.
38 Geo. III. c. 69—Relating to the standard of gold plate.
38 Geo. III. c. 78—Regulations as to newspapers.
38 Geo. III. c. 85—As to the materials upon what duties are to be charged.
39 Geo. III. c. 73—Exempting certain legacies.
39 Geo. III. c. 74—Post horses.
39 Geo. III. c. 92—As to the period for making up the accounts.
39 Geo. III. c. 107—Duties on bills and notes for small sums.
39 & 40 Geo. III. c. 54—Charging public accountants with interest, &c.
39 & 40 Geo. III. c. 72—Duties on attested copies, and amending the law as to sea policies, &c.
39 & 40 Geo. III. c. 84—Indentures of apprenticeship and attested copies.
41 Geo. III. c. 10—Additional duties on bills, notes, insurances, deeds, &c.
41 Geo. III. c. 22—Indentures of apprenticeship.
41 Geo. III. c. 69—Transferring the duties on hair powder and armorial bearings to Excise.
41 Geo. III. c. 71—The like on horse-dealers' licences.
42 Geo. III. c. 23—As to the payment of the duty on apprentices, &c., (Annual Indemnity Act).

42 Geo. III. c. 52—Post-horse duties.
42 Geo. III. c. 54—Lotteries.
42 Geo. III. c. 70—Accounts to be laid annually before Parliament.
42 Geo. III. c. 99—As to the stamping of certain deeds and to legacy duties and sea insurances.
42 Geo. III. c. 100—Post horses.
42 Geo. III. c. 104—Lotteries (Ireland).
42 Geo. III. c. 119—Suppressing illegal lotteries.
43 Geo. III. c. 73—Amending 42 Geo. III. c. 56, as to medicines.
43 Geo. III. c. 126—Duties on receipts.
43 Geo. III. c. 127—Consolidating stamp duties.
44 Geo. III. c. 59—Amending 37 Geo. III. c. 90, as to entering attorneys' certificates, &c.
44 Geo. III. c. 98—Repealing all stamp duties and granting others in lieu.
45 Geo. III. c. 28—Additional duties on legacies (real estate).
46 Geo. III. c. 43—Duties on appraisements.
46 Geo. III. c. 76—Regulating the office of Receiver General.
46 Geo. III. c. 81—Lace licences.
47 Geo. III. sess. 2, c. 39—Charging public accountants with interest.
48 Geo. III. c. 98—Post horses.
48 Geo. III. c. 149—Repealing most of the duties granted by 44 Geo. III. c. 98, and those granted by 45 Geo. III. c. 28, on legacies, and by 46 Geo. III. c. 43, on appraisements.
49 Geo. III. c. 5—Amending 37 Geo. III. c. 90, as to newspapers.
50 Geo. III. c. 35—Altering the duties on fire insurances abroad.
50 Geo. III. c. 59—Embezzling public moneys.
50 Geo. III. c. 71—Appropriating part of the surplus of stamp duties.
50 Geo. III. c. 85—To regulate the taking of securities.
51 Geo. III. c. 70—Repealing the hat duty.
51 Geo. III. c. 76—Post horses.
52 Geo. III. c. 59—Allowing drawback on plate exported for private use.
52 Geo. III. c. 66—Explaining and amending 50 Geo. III. c. 85.
52 Geo. III. c. 143—Amending the Acts imposing the penalty of death relating to the revenue.
52 Geo. III. c. 150—Amending 44 Geo. III. c. 98, as to medicines.
53 Geo. III. c. 103—Authorizing the transfer of licences (plate) to executors, &c.
53 Geo. III. c. 108—Altering 48 Geo. III. as to notes, conveyances, and mortgages.
54 Geo. III. c. 144—Relating to sea insurances and attorneys' certificates.
54 Geo. III. c. 174—Post horses.
55 Geo. III. c. 30—Additional duty on plate licences (temporary).
55 Geo. III. c. 184—Repealing the duties granted by 48 Geo. III. and granting others in lieu.
55 Geo. III. c. 185—Repealing certain other duties granted by 48 Geo. III. and granting others in lieu.
56 Geo. III. c. 107—Amending 55 Geo. III. c. 184, as to inventories in Scotland.
57 Geo. III. c. 59—Post horses.
59 Geo. III. c. 32—The additional duties granted by 55 Geo. III. c. 30, not to be payable in respect of watch cases.
60 Geo. III. c. 9—Newspapers.
1 Geo. IV. c. 14—Repealing the drawback on certain gold articles.
1 Geo. IV. c. 72—Lotteries.
1 Geo. IV. c. 88—Post horses.
1 & 2 Geo. IV. c. 55—Duties in Great Britain and Ireland respectively.
3 Geo. IV. c. 27—Plate licences; continuing temporary duties.
3 Geo. IV. c. 67—Repealing part of the last Act.
3 Geo. IV. c. 95—Relating to stage coaches.

3 Geo. IV. c. 117—Reducing the duties on reconveyances and transfers of mortgages, &c.
4 Geo. IV. c. 60—Lotteries.
4 Geo. IV. c. 62—Post horses.
5 Geo. IV. c. 41—Repealing the duties on law proceedings.
6 Geo. IV. c. 41—Repealing the stamp duties on transfers of ships, and altering those on bonds and debentures relating to drawbacks.
6 Geo. IV. cc. 45 & 46—Articled clerks.
6 Geo. IV. c. 118—Transferring the duties on plate licences from Excise to Stamps.
6 Geo. IV. c. 119—Duties on supplements to newspapers.
7 Geo. IV. c. 6—Bankers' notes under 5*l*.
7 Geo. IV. c. 33—Regulations as to licensing stage coaches.
7 Geo. IV. c. 44—Prohibiting the stamping of articles of clerkship.
7 Geo. IV. c. 46—Joint-stock banks in England.
7 Geo. IV. c. 67—Ditto in Scotland.
7 & 8 Geo. IV. c. 55—Consolidating the Boards for Great Britain and Ireland.
9 Geo. IV. c. 13—Fire insurances.
9 Geo. IV. c. 18—Cards and dice.
9 Geo. IV. c. 23—Composition on bills and notes.
9 Geo. IV. c. 25—Relating to solicitors for revenue boards.
9 Geo. IV. c. 27—Discount on receipt stamps.
9 Geo. IV. c. 49—To amend the stamp laws in several respects.
1 Will. IV. c. 66—Reducing into one Act all forgeries punishable with death.
1 & 2 Will. IV. c. 22—Hackney carriages.
2 Will. IV. c. 2—Outstanding lottery tickets.
2 & 3 Will. IV. c. 120—Stage carriages.
3 & 4 Will. IV. c. 23—Reducing duties on advertisements and certain sea insurances; repealing duties on pamphlets, receipts for sums under 5*l*. and insurances on farming stock.
3 & 4 Will. IV. c. 48—Amending 2 & 3 Will. IV. c. 120.
3 & 4 Will. IV. c. 83—Returns of bankers' notes.
3 & 4 Will. IV. c. 97—For preventing the selling of forged stamps, &c.
4 & 5 Will. IV. c. 57—Repealing the duties on almanacks, &c.
4 & 5 Will. IV. c. 60—Consolidating Boards of Stamps and Taxes.
5 Will. IV. c. 2—Amending 38 Geo. III. c. 78.
5 & 6 Will. IV. c. 20—Consolidating offices of Stamps and Taxes.
5 & 6 Will. IV. c. 64—Duties on life policies, certain instruments relating to the East India Company, admissions to Inns of Courts, and race horses.
6 & 7 Will. IV. c. 28—Deposit of stock.
6 & 7 Will. IV. c. 45—Transferring post-horse duties to Excise.
6 & 7 Will. IV. c. 65—As to stage carriages.
6 & 7 Will. IV. c. 69—Plate in Scotland (Standard).
6 & 7 Will. IV. c. 76—Duties on newspapers.
1 & 2 Vict. c. 35—Repealing duties on freemen's admission in certain cases.
1 & 2 Vict. c. 61—Amending 6 & 7 Vict. c. 28.
1 & 2 Vict. c. 79—Duties on licences to drivers of hackney carriages, &c.
1 & 2 Vict. c. 85—Authorizing the use of British stamps in Ireland, and *vice versâ*.
2 & 3 Vict. c. 52—Postage stamps.
2 & 3 Vict. c. 66—Reducing stage-carriage duties.
3 & 4 Vict. c. 96—Postage stamps.
4 Vict. c. 21—Dispensing with lease for a year.
4 & 5 Vict. c. 34—Declaration as to duties on affidavits.
4 & 5 Vict. c. 50—Returns of bankers' notes in circulation.
4 & 5 Vict. c. 54—Forgery.
5 & 6 Vict. c. 79—Railways and other duties.
6 & 7 Vict. c. 72—Ecclesiastical preferments and copyright of design.

6 & 7 Vict. c. 73—Attorneys and solicitors.
6 & 7 Vict. c. 86—Licences to drivers of hackney carriages.
7 Vict. c 21—Sea insurances, agreements, proxies, &c.
7 & 8 Vict. c. 22—Gold and silver plate.
7 & 8 Vict. c. 32—To regulate the issue of bank notes.
7 & 8 Vict. c. 76—To simplify the transfer of property.
7 & 8 Vict. c. 85—Railways, exemption of duty on cheap trains.
7 & 8 Vict. c. 86—Repealing part of 34 Geo. III. c. 14, as to enrolment of articles of clerkship.
7 & 8 Vict. c. 113—Joint-stock banks in England.
8 Vict. c. 15—As to plate licences by auctioneers.
8 & 9 Vict. c. 38—Bank notes, Scotland.
8 & 9 Vict. c. 74—Illegal lotteries.
8 & 9 Vict. c. 76—Licences to appraisers, duties on legacies, &c.
8 & 9 Vict. c 106—To amend the law of real property.
9 Vict. c. 17—Admission to corporations in Scotland.
12 Vict. c. 1—To consolidate the Boards of Excise and Stamps and Taxes, &c.
12 & 13 Vict. c. 80—To repeal allowance on purchase of stamps, &c., and grant others.
12 & 13 Vict. c. 106—To amend and consolidate the laws relating to bankrupts.
13 & 14 Vict. c. 97—To repeal certain stamp duties and grant others; and to amend the laws.
15 & 16 Vict. c. 83—Granting stamp duties in respect of letters patent.
16 Vict. c. 5—Granting other stamp duties on letters patent.
16 & 17 Vict. c. 51—Succession Duty Act.
16 & 17 Vict c. 59 and 16 & 17 Vict. c. 63—Repealing certain stamp duties and granting others and amending the laws.
16 & 17 Vict. c. 71—To amend the law relating to newspapers.
16 & 17 Vict. c. 107 (Customs Act, ss. 114, 115, 116)—To prevent frauds in respect of playing cards.

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SUPPLEMENT

Second Edition

OF THE

TREATISE

THE STAMP LAWS.

BY HUGH TILSLEY,

ASSISTANT SOLICITOR OF INLAND REVENUE.

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PREFACE

TO THE SUPPLEMENT.

The important alterations in the Stamp Duties and in the laws relating to them, effected by the Legislature since the publication of the former Supplement to the Author's Treatise, together with the judicial decisions during the same period, have rendered a fresh Supplement necessary, which is now published, containing entirely new Tables of Duties (substituted in the proper place for the old ones), Abstracts and full Copies of the Statutes by which the alterations have been made, with observations thereon, and the cases determined by the different Courts affecting any of the Duties. By means of this Supplement, and a new Index to the whole, the Work is made complete to the present time.

THE STAMP LAWS.

THE Acts relating to Stamp Duties, passed since the publication of the former part of this Work, to which any particular reference is necessary, are the following; viz :—

13 & 14 Vict. c. 97; 16 & 17 Vict. c. 51, (granting Succession Duties); 16 & 17 Vict. c. 59, 16 & 17 Vict. c. 63, and 17 & 18 Vict. c. 83. To these may be added the 16 & 17 Vict. c. 71, altering the definition of a newspaper; and the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, the clauses of which, affecting the duties, are extracted at page 1004, *post*.

An Abstract of each of the five first mentioned Acts, pointing out the alterations made by it will be given, together also with a full copy; and under the various separate heads of charge will be comprised remarks on the new duties and the new law, with the cases not contained in the foregoing Treatise; being an analysis of all new matter of every kind relating to Stamp Duties (*a*).

ABSTRACT OF 13 & 14 VICT. c. 97.

Sect. 1.—The duties granted by this Act commenced on the 11th October, 1850, but instruments executed or bearing date on or before the 10th day of that month, are chargeable with the old duties. Notwithstanding the decisions, therefore, which establish that a deed, when brought to be stamped, is chargeable with the duty *then* payable, and not that to which it was liable when made, all instruments executed by any party, or dated before the 11th October, 1850, are liable to the old and not the new duties. Commencement of new duties

Sect 2.—The new duties are made subject to all the enactments in force, relating to those for which they are substituted, so far as such enactments are consistent with this Act; and the schedule of duties annexed thereto, and also that annexed to the 55 Geo III. c. 184, are to be considered as incorporated, and are to be read together as one schedule; the rules, regulations, directions, and Provisions of former Acts to be in force, and the new and old schedules incorporated.

(*a*) For the abstract and copy of the 17 & 18 Vict. c. 83, see page 992

exemptions, therefore, as well as the duties contained in the schedule to the 55 Geo. III. c. 184, where not altered, remain as before.

In conformity with this provision (and similar ones in the subsequent Acts) the Tables have been carefully compiled.

And all exemptions.

Sect. 3.—It has been deemed proper, however, in order to obviate all doubt upon the subject, to declare that the Act shall not be construed to charge with stamp duty any instrument by any Act expressly exempted from duty; nor to subject transfers of Bank, South Sea, and East India Stock to any higher duty than they were before liable to.

Leases in Ireland.

Sect. 4.—The duties on certain leases in Ireland differed from those in England; some of them being imposed by the Act assimilating the duties, in general, (5 & 6 Vict. c. 82,) and the duty of 1*s.*, by the 9 & 10 Vict. c. 112; these are repealed, the duties on all leases being now the same throughout the United Kingdom.

Agreements under hand only, for letting land in Ireland since 6th June, 1844.

Sect. 5.—And as regards certain agreements for letting lands in Ireland, not amounting in law to leases, an anomaly, in reference to the past, has been removed. By reason of the amplified terms made use of in the 5 & 6 Vict. c. 82, copied from the Irish General Stamp Act, 56 Geo. III. c. 56, contracts under hand only, for letting lands, where the rent did not exceed 50*l.*, and the premium 200*l.*, were chargeable with duty as leases, the lowest amount of such duty being 5*s.*: whereas, if the rent or premium exceeded such sums, respectively, these documents, as well as similar ones in England, whatever the amount of rent or premium might be, were subject only to the duty of 2*s.* 6*d.* as agreements; it has, therefore, been declared, that no such instrument, made since the 6th June, 1844, shall be deemed to be subject or liable to any higher amount of duty than 2*s.* 6*d.*

Duties on lease for a year repealed.

Sect. 6.—The duties on a bargain and sale, or lease for a year, are wholly repealed; and, in consequence, the provisions in the 4 & 5 Vict. c. 21, and 8 & 9 Vict. c. 106, which require the duty in respect of a lease for a year to be denoted on the release, or grant, where there is no lease for a year, are also repealed. It was, perhaps, scarcely necessary to repeal these provisions; they would have ceased to be of any effect with the repeal of the duties; the omission, therefore, to include, also, the similar enactment in the 8 & 9 Vict. c 119, is of no importance.

The corresponding duties on certain conveyances, also repealed.

Sect. 7.—The duties on leases for a year being thus disposed of, the corresponding additional duties on deeds of feoffment, and bargain and sale, in certain cases, charged under the head "CONVEYANCE," are also dispensed with.

Sect. 8.—If any person has received, or shall at any time receive any money, as and for the duty upon or in respect of any instrument or transaction, or any legacy or residue, and shall improperly neglect to appropriate the same, he is declared to be a debtor to the Crown, and may be made accountable by summary proceeding in the Exchequer, with costs.

Persons receiving money for duties, and not appropriating it, to be accountable to the Crown.

This enactment is calculated as well for the interest of the client as the revenue; and may be made use of to protect him against a claim, on the part of the Crown, for duty which he has intrusted to another to discharge.

Sect. 9.—Relief is given in cases of transfers of mortgage, further charges, and further securities, executed on or before the 10th October, 1850, from certain additional duties rendered necessary by modern decisions; in this respect placing these deeds in the same position as those chargeable under the new Act. See "MORTGAGE."

Relief in transfers of mortgage, &c., already made.

Sect. 10—In the case of a lease executed before the 20th March, 1850, granted to a person purchasing the interest of an intermediate party, where the purchase-money is omitted to be set forth, the consequences of such omission are provided against.

Indemnity in certain cases of leases to purchasers.

The only effect of this enactment (and which was all that was required) is to relieve parties from all liabilities arising from the irregularity; the declaration, that the instrument should not be deemed to be improperly stamped, was unnecessary, as no duty could attach in reference to matter not contained in it.

Sect. 11.—Progressive duties are not to be chargeable, or to be deemed to have been chargeable, on any instrument in respect of the quantity of words contained in *any other instrument*, liable to stamp duty, and duly stamped, indorsed upon, or annexed to such first-mentioned instrument, or in any manner incorporated with, or referred to in the same. Thus, the words of an instrument which is liable to stamp duty, *per se*, and is duly stamped, and which is made part of any subsequent instrument, by being annexed to it, or by having such subsequent instrument indorsed upon it, are not to be reckoned in estimating the progressive duty chargeable on such subsequent instrument.

Progressive duties not to be charged in respect of separate deeds annexed.

This provision precludes all such questions as those in *Veal* v. *Nicholls*, *Attwood* v. *Small*, and *Weeden* v. *Woodbridge*, mentioned in the former part of this Work, under the head "PROGRESSIVE DUTIES."

Sect. 12.—The terms on which instruments may be stamped are materially altered.

The terms on which instru-

ments may be stamped.

In general, previously to this Act, where an insufficient duty was impressed, the Commissioners had no authority for making allowance for it, on application to have a proper stamp affixed; such duty was, therefore, a total loss to the party, whether a penalty was also paid, or not; now, however, the deficient duty only is required to be paid, besides the penalty.

Under the late law, the ordinary penalty payable on stamping an instrument, of whatever date, was 5*l.*; and it was in the power of any person, who had the custody of an instrument, to forego, for an indefinite period, the stamping of it, and, at any distance of time to get the stamp impressed on payment of that penalty, and the duty; thus offering an inducement, not to professional men merely, but to the parties themselves, whether in regard to instruments of a temporary or a permanent character, to withhold the duty, with a certainty, in most cases, of ultimate advantage, and probably, in many instances, to the full extent of the duty. Such a state of things was admitted by all to require amendment; and that which has now been effected, or something like it, has been contemplated for many years past, and has formed a portion of the propositions for amending the stamp laws offered by successive Governments. The penalty now payable on stamping an instrument is 10*l.*; and, where the duty required to be impressed exceeds 10*l.*, then, in addition, by way of penalty, interest at 5*l. per cent. per annum* on such duty, calculated from the date or first execution of the instrument; but no amount of interest is to be paid beyond that of the duty required. And, in lieu of the receipt for the penalty as well as the duty, previously written upon the instrument, a stamp is directed to be affixed, denoting the payment of it. The power is retained of remitting the penalty within twelve calendar months after the execution of the instrument by the person who first executed it, where it is shown, to the satisfaction of the Commissioners, that it was not duly stamped by reason of accident, mistake, inadvertency, or urgent necessity, and without any wilful design or intention to defraud the Crown, or to evade or delay the payment of the duty. This general provision is not to apply to any instrument, the stamping of which is expressly prohibited, or restricted, or for which any special provision has been made by any law in force. The cases referred to, which are thus excepted, will be found in the former part of this Work under the head "INSTRUMENTS, II."

This enactment took effect immediately on the passing of the Act (14th August, 1850), having reference to instruments subse-

quently executed, whether before or after the commencement of the new duties.

Sect. 13.—Where an instrument has been executed at any place out of the kingdom, without being properly stamped, it may be stamped without the payment of a penalty, if it be brought to the Commissioners within two calendar months after its being received in the kingdom, on proof of the facts to the satisfaction of the Board.

Where executed abroad.

Sect. 14.—A new feature in the stamp laws, and one of a very important character, has been introduced. The Commissioners are now empowered to denote, in all cases, that an instrument is sufficiently stamped (*a*); and thus to preclude all question upon the subject. This provision cannot fail to be highly valued by every professional man, and the security to be obtained by it will be considered to be cheaply purchased at the price to be paid. Any instrument, liable to stamp duty, may be taken to the Stamp Office, and if, or when it shall be stamped with the full duty with which it shall, in the opinion of the Commissioners, be chargeable, the Commissioners are required, on payment of 10*s*., to affix a particular stamp, to be provided for that purpose, which is to be deemed and taken to signify and denote that the full and proper duty has been paid; and every such instrument is, thereupon, to be deemed to be duly stamped, and is to be receivable in evidence, notwithstanding any objection made to it as being insufficiently stamped. The only exceptions to the operation of this provision, are, the case of a bond or mortgage made for securing money, or stock, without limit: in which it is unnecessary, and would be inconsistent; and that of a grant of probate or letters of administration.

Any instrument may be impressed with a stamp to denote that the *full* duty has been paid.

The necessity for some provision of this nature, as well as the justice and propriety of it, has at all times, been felt; and for want of it many and serious evils have been experienced. It is one for which not only the Writer, but almost every person practically concerned in administering the stamp laws, has been an advocate. A solicitor, when he hands over a deed, or puts it away, may now be assured, if he pleases, that he does so with a certainty that, whenever occasion shall call for its inspection, no question can arise as to the stamp duty; and, on investigating a title, he need not trouble himself about the sufficiency of the stamp on any instrument, when he perceives the question thus concluded. Again, it will be

(*a*) See a similar provision in the 16 & 17 Vict. c. 59, s. 13, in reference to instruments not chargeable with any duty.

in the power of any person, who is about to proceed to the trial of an action in which a document may be required to be produced, to provide against the rejection of it in evidence on the ground of an insufficiency of the stamp upon it.

This stamp on any instrument may be recognised at a glance, it being distinguishable from all others by its having a pink ground; and the sight of it will render unnecessary any investigation of the duties with which the instrument is impressed.

Mode of proceeding to obtain adjudication stamp.

In order to obtain the stamp, it will be necessary to be prepared with an abstract of the instrument; and, on applying at the office of the Solicitor of Inland Revenue, a printed form of warrant for payment to the Receiver-General of the fee of 10*s.* may be procured; after which payment the warrant and abstract are to be left in the solicitor's office with a clerk, who will compare the abstract with the instrument.

Where parties differ from the Board as to the duty, a case may be stated for the Court.

Sect. 15.—All that was desired by members of the profession in general, upon the subject under observation, as sufficient for every useful purpose, was, that such a power, as has been conferred, should be vested solely in the Commissioners; it has been thought proper, however, that the matter shall not be left entirely in the hands of the Board; and an appeal has been given. The mode, at first proposed, was that of stating a case for the opinion, *ex parte*, of a Judge, and forming, by such means, rules for interpreting the Stamp Laws. This system being found impracticable it was given up; but the idea of an appeal to some tribunal having been entertained, it was not thought proper, altogether, to abandon it; and therefore a case for the opinion of the Court, to be argued by Counsel for the Crown and for the parties, was suggested, and consented to. It is thus open to any person who seeks to have an adjudication stamp affixed to an instrument, but who is of opinion or is advised that a greater amount of duty is insisted upon by the Commissioners than the law itself exacts, to require, upon certain terms, a case to be stated for the opinion of the Court of Exchequer, with the view to disposing of the point at once, instead of relying upon the opinion of himself or his adviser, as to the sufficiency of the stamp duty already denoted upon the instrument. It is to be observed that this stamp is not essential in any case, it only affords an assurance of safety.

Conveyances, mortgages, and settlements, in certain cases, not to be

Sect. 16.—The new *ad valorem* duties on conveyances, mortgages, and settlements being, in respect of sums of large amount, higher than those that are repealed, it has been provided that, where the transactions giving rise to any such instruments took

place before a certain date, no higher duty shall be payable than would have been if the Act had not been passed (*a*)

charged with higher duty than before.

Sect. 17.—Instruments may be stamped at the head office, either in London or Dublin, notwithstanding they may be chargeable with duties in the other part of the kingdom. It has been thought proper to provide for this by enactment, although, perhaps, it was scarcely necessary; it might have been effected by an official arrangement, if required.

Deeds may be stamped either in London or Dublin.

Sect. 18.—The discount of 7*l.* 10*s.* *per cent.* on the purchase of receipt stamps, which was taken away by the 12 & 13 Vict. c. 80, is restored.

Discount on receipt stamps.

Sect. 19.—Licences to be granted to persons in Ireland for insuring against fire are to be permanent, as in England, and not annual; and the securities, also.

Fire-insurance licences in Ireland to be permanent.

Sect. 20.—It may be proper to bring to notice that the clause containing the rules for construing the terms and expressions of the Act, extends to all other Acts relating to stamp duties; the same rules being directed to be applied in all cases.

Construction of terms.

(*a*) It is unnecessary further to allude to this provision, the time limited for procuring the certificate required to give effect to it having expired.

The Succession Duty Act.

16 & 17 VICT. c. 51.

THIS Act has effected an important object, which the Government of 1796, when the Legacy Duty Act was passed, attempted, but failed to accomplish: viz. the charging of a duty on any acquisition of real property upon death, whether the title be under any legal instrument, testamentary or otherwise, or arise by operation of law upon intestacy. More than this, it has extended the charge in respect of personal property, by including all cases of benefit upon death accruing under voluntary obligations or settlements. And with the view to prevent, as much as possible, escape from liability, provision is made for charging the duty in cases where, by an instrument *inter vivos*, an immediate interest is given, but there exists some secret trust or arrangement by which the beneficial ownership shall, in fact, devolve upon death.

The benefit upon which the charge arises, by whatever means acquired, is termed a "succession;" the person taking it a "successor;" the person from whom it is derived a "predecessor;" and the instrument, if any, by which it is transmitted, a "disposition."

Effect on Legacy Duty Acts.

The Legacy Duty Acts are affected in the following instances: viz. where a legatee is married to a person of nearer consanguinity to the testator than himself or herself, the lower of the two rates of duty is to be charged; for example,—On a legacy given to the husband of a daughter, or an annuity to the wife of a son, one, and not ten *per cent.* is payable. Leasehold property (in cases where the duty is not already chargeable), is taken away from the operation of the Legacy Duty Acts, and is to be charged as real estate under this Act. Annuities are to be valued for legacy duty according to the new Tables.

What is a succession.

The following is a general outline of the different enactments:—

Sects. 2, 8, 10.—Any benefit accruing upon the death of any person dying after the 18th May, 1853, whether arising from any instrument, testamentary or otherwise, or devolving by operation of law, and whether in the form of real estate or personal estate, is a SUCCESSION, chargeable with duty at the same rate as a gift by will under the Legacy Duty Acts.

Accrual by survivorship.

Sect. 3.—Where, at the commencement of the Act, property was

vested in any persons jointly, by any title not conferring a succession, any beneficial interest accruing by survivorship is to be deemed a succession; and where, after such commencement, persons take a succession jointly, they are to pay duty in proportion to their interests; and any interest accruing by survivorship is to be deemed a new succession.

Powers of appointment.

Sect. 4.—A person having a general power of appointment under a disposition taking effect upon death, is to be deemed, on making an appointment, entitled to the property as a succession from the donor of the power; and in the case of a limited power, the person taking under the exercise of it is to be deemed to take a succession from the person creating the power.

Increase by extinction of charge.

Sect. 5.—Any increase of benefit by the extinction or determination, by death, of any charge upon, or any estate in property, is chargeable as a succession.

Determination of lease for life.

Sect. 6.—But the determination of a lease for life by the death of the *cestui que vie* in the lifetime of the person who, at the commencement of the Act, was entitled to the immediate reversion, is not to have the effect of charging a duty.

Increase by extinction of benefit reserved by grantor.

Sect. 7.—Where any disposition, not being a *bonâ fide* sale, and not conferring an interest expectant on death on the person in whose favour it is made, is accompanied by the reservation or assurance of, or contract for any benefit to the grantor or any other person for any term of life, the increase of benefit afterwards accruing is to be a succession.

Succession conferred by any disposition to take effect by reference to death.

Sect. 8.—Any disposition made to take effect at a period ascertainable only by reference to the date of the death of any person is to be deemed to confer a succession; and where a disposition is made so as not to confer a succession, but, by reason of some arrangement capable of being enforced, the property does not *bonâ fide* pass according to the disposition, but the beneficial ownership, in fact, devolves to any person upon death, such person is to be deemed to acquire a succession; and a court of competent jurisdiction may, in any case of fraudulent disposition made to evade the duty, declare a succession to have been conferred.

Secret reservation.

Duties.

Sect. 9.—The duties are to be under the care of the Commissioners of Inland Revenue, who are to provide stamps for denoting the rate of duty, &c.

Sect 10.—The duties are at the same rates as the legacy duties, but are granted in varied terms.

Successor married to nearer relative.

Sect 11.—Where a successor is married to a person of nearer consanguinity to the predecessor than himself or herself, and who

would therefore be chargeable with a lower rate of duty, such lower rate is to be the one payable.

Successor also predecessor.

Sect. 12.—Except in certain cases specified, no person is to be chargeable with duty on a succession taken under a disposition made by himself.

Joint predecessors.

Sect. 13.—Where the succession is derived from several predecessors, and the proportions cannot be distinguished, the Commissioners may agree as to the duty; if there be no agreement, the succession to be deemed to be derived in equal proportions.

Succession transmitted by death.

Sect. 14.—Where the interest of a successor in personal property has, before he becomes entitled in possession, passed by death to another successor, only one duty (the higher of the two rates in such case) is to be paid.

Alienation or acceleration of succession.

Sect. 15.—Where any succession is vested in another person by alienation before the successor becomes entitled in possession, or is accelerated by extinction of a prior interest, duty is to be paid at the same rate and time as if no transfer or acceleration had taken place.

Charity trusts.

Sect. 16.—Property subject to trusts for charitable or public purposes is to be charged at 10*l.* per centum.

Life policies, and *post obit* bonds.

Sect. 17.—Life insurance, and bonds and contracts for payment, after death, of money or money's worth, is not to create the relation of predecessor and successor between the parties to the policy, bond, or contract.

Exemptions

Sect. 18.—Exemptions.—In the following cases no duty is to be paid: viz. where the value of the *whole* succession or successions from the same predecessor is less than 100*l.*;—in respect of any succession of less value than 20*l*;—for money given in trust to pay duties;—on a succession where, if it was a legacy from the same predecessor, it would be exempt;—on any interest surrendered or extinguished before the commencement of the Act. The same acquisition not to be charged both under this Act and the Legacy Duty Acts.

Leaseholds.

Sect. 19.—Leasehold property is not to be chargeable under the Legacy Duty Acts with duty not already due.

Note.—Leaseholds, for the purposes of this Act, are included under the term "real property," sect. 1.

When duties to be paid.

Sect. 20.—The duty to be paid when the party becomes entitled in possession; and when any increase happens, unless previously commuted; the duties on annuities to be paid by instalments; provided that no duty is to be payable upon the determination of a lease, purporting to be at rack-rent, in respect of the increase.

Successions in real property

Sect. 21.—The interest of a successor in real property (except

otherwise provided) is to be valued as an annuity for his life, or any less period for which he is entitled; the value to be ascertained according to Tables annexed, and the duty to be paid by eight half-yearly instalments, commencing at the end of a twelvemonth. If he die before all the instalments become due, the remainder is not to be paid, unless he was competent to dispose, by will, of a continuing interest; in which case they are to be a continuing charge on the property in exoneration of his other property. How to be valued.

Sect. 22.—Allowance to be made of all necessary outgoings in estimating the annual value of property yielding income not of a fluctuating character. Outgoings.

Sect. 23.—Duty to be paid on the net moneys arising from timber from time to time, yearly, where they amount, in any year, to 10*l*. The duty may be commuted for life. Timber.

Sect. 24.—Church patronage not to be chargeable unless disposed of for value. Advowsons.

Sect. 25.—Where real property is subject to a lease, and duty has not been paid on the full value, it is to be chargeable on any fine received for renewal. Property subject to leases.

Sect. 26.—Where the annual value of real property is of a fluctuating character, the profits are to be calculated upon an average of a number of years to be agreed upon; or the principal value is to be ascertained, and the annual value to be taken at 3*l*. per centum thereon. Uncertain profits.

Sect. 27.—Where a corporation or company take real property as successors, the duty is to be assessed on the principal value and paid by instalments, as in other cases. The amount may be raised on the security of the property. Where corporations successors.

Sect. 28.—A deduction to be made for fines, and other charges incident to the tenure, to which a successor may be subject. Allowance for fines.

Sect. 29.—Moneys to arise from the sale of real property are to be chargeable as personalty; but if subject to any trust for re-investment in the purchase of other real property, to which the successor would not be absolutely entitled, then to be deemed real property; and such successor's interest to be treated as an annuity. Real property directed to be sold.

Sect. 30.—Personal property, subject to any trust for investment in the purchase of real property to which the successor would be absolutely entitled, is to be chargeable as personal property; but to be chargeable as real property if he would not be so entitled, and each successor's interest to be treated as an annuity. Money to be invested in land.

Sect. 31.—The value of any annuity for the purposes of this Act or the Legacy Duty Acts to be calculated according to Tables annexed. Value of annuities.

Assessment of personalty.

Sect. 32.—Certain provisions contained in the 36 Geo. III. c. 52, relating to the assessment and payment of duty on personal estate, to be applied in the case of successions of personal estate.

Allowance to donee of power.

Sect. 33.—The donee of a general power, on becoming chargeable in respect of his execution of it, is to be allowed any duty previously paid on a limited interest.

What allowance to be made for incumbrances.

Sect. 34.—No allowance to be made for any incumbrance created by the successor not made in execution of a prior special power; but allowance to be made for all other incumbrances; and also for moneys laid out by him in substantial repairs or permanent improvement, previously to his possession. Provided that in case of any such prior principal charge allowance is to be made in respect only of the interest payable as reducing the annual value *pro tanto*.

Contingent incumbrances.

Sects. 35, 36.—No allowance to be made for contingent incumbrances, nor for any contingency upon which the property may pass away; but if the incumbrances take effect, or the contingency happens, the successor is to be entitled to a return of duty.

When duty to be charged and where refunded.

Sect. 37.—The successor to be chargeable with duty only on the value from time to time obtained; and duty to be refunded where paid by mistake, or for property not recoverable or of which the successor shall have been deprived by superior title; and where, for any other reason, it ought to be.

Where property relinquished.

Sect. 38.—Where a successor, upon taking a succession, is bound to relinquish other property, a just allowance is to be made.

Duties may be compounded.

Sect. 39.—The Commissioners may compound the duty where it cannot be fairly ascertained, or they think it expedient. They may also enlarge the time for payment in any case.

May be paid in advance on discount.

Sect. 40.—The Commissioners may also receive the duty in advance, allowing a discount of 4*l. per centum per annum*, or at any other rate directed by the Treasury; without prejudice to any right of repayment in any case.

May be commuted.

Sect. 41.—They may likewise commute the duty presumptively payable on a succession in expectancy.

Duty to be a first charge.

Sect. 42.—The duty is to be a first charge on the interest of the successor, and of all persons claiming in his right in real property; and on his interest in personal property while it remains in the control of himself or his trustee, &c., or of the husband of any wife who is a successor; and to be a debt due from him, having, in the case of real property, priority over charges created by him; but it is not to affect his other real property, nor any power of sale, exchange, or partition of settled real property; the duty in any such latter case to be a charge on the real property acquired in substitu-

tion, and in the mean time upon all moneys arising from the exercise of any such power.

Separate assessments may be made.

Sect. 43.—Separate assessments in respect of separate properties are to be made if required; the Commissioners to be at liberty, by their certificates, to declare that any duties already assessed shall be charged on separate parts of the property.

What persons to be accountable.

Sect. 44.—The following persons, besides the successor, are to be accountable for the duty to the extent of the property received or disposed of by them: viz. every trustee, guardian, committee, tutor or curator, or husband; and every person in whom the property is vested at the time of the succession becoming an interest in possession; all of whom may compound the duty, and retain the amount, or raise it, the security for it having priority. Every person accountable is to be a debtor for the amount unpaid.

Notice of succession to be given.

Sect. 45.—The persons made accountable are, in the case of personal property, at the time of the first payment, &c., of any part, and, in case of real property, when any duty shall first become payable, to give notice to the Commissioners, and render a proper account; the Commissioners, if satisfied with the account, may assess the duty upon it; but if not, they may cause an account and estimate to be taken, and assess the duty thereon, subject to appeal; and if such duty exceed that assessable on the account rendered, and there be no appeal, they may charge the expenses incurred; if there be an appeal, the expenses to be in the discretion of the Court.

Penalty for neglect

Sect. 46.—If notice be wilfully neglected to be given at the prescribed period, the party is to be liable to a penalty of 10*l.* per centum on the duty (for this purpose to be assumed to be in all cases 1*l.* per centum only); and a like penalty for every month after the first; and if the duty be not paid within twenty-one days after it is assessed he is to be liable to like cumulative penalties.

Summary process.

Sects 47, 48.—If default be made in delivering an account under this Act, or the Legacy Duty Acts, a summary process from the Court of Exchequer may be issued.

Production of books, &c.

Sect. 49.—The Commissioners may require the production of all books and documents relating to the accounts, and may, without fee, inspect and take copies of public books; but the information obtained to be deemed confidential.

Appeal from assessment of commissioners

Sect. 50.—Any party dissatisfied with the assessment of the Commissioners may, on giving twenty-one days' notice, and also, within a further period of thirty days, a statement of the grounds thereof, appeal by petition to the Court of Exchequer; and the Court or any Judge may determine the matter and the costs thereof, with power to direct inquiry to be made. But if the sum

in dispute do not exceed 50*l.*, such appeal may be made to the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district in which the appellant resides or the property is situate.

Payments to be entered and receipts given.

Sect. 51.—Payments of duty to be entered in books, and receipts to be given, in such form as the Commissioners shall think fit, duly stamped; the Commissioners, on being applied to for the same, to deliver certificates of payment to persons interested.

Protection to purchaser.

Sect. 52.—Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof, is to exonerate from the duty a *bonâ fide* purchaser for valuable consideration without notice, notwithstanding any suppression or mis-statement, or any insufficiency of assessment; and no *bonâ fide* purchaser for valuable consideration, under a title not appearing to confer a succession, is to be subject to the duty by reason of any extrinsic circumstances of which he had no notice.

Where suit instituted.

Sect. 53.—In any suit for the administration of property chargeable under this Act or the Legacy Duty Acts, the Court is to provide for payment of the duty.

Commencement.

Sect. 54.—The Act is to be taken to have come into operation on the 19th May, 1853.

Title.

Sect. 55.—The Act may be cited as "The Succession Duty Act, 1853."

ABSTRACT.

16 & 17 VICT. c. 59

New stamp duties.

Sect. 1.—The duties granted by this Act commenced on the 11th October, 1853; they are to be found in the Table, under the titles "APPRENTICESHIP," "DEBENTURE" (*for Drawback*), "BILL OF EXCHANGE" (*Draft or Order*), "POLICY OF ASSURANCE" (*on Lives*), and "RECEIPT." Instruments signed or dated before or upon the 10th October are chargeable with the old duties.

Former provisions.

Sect. 2.—The laws relating to Stamp Duties in general, as well as all exemptions, are kept in force, and directed to be applied to the new duties.

Adhesive stamps for receipts and drafts.

Sect. 3.—The duties of one penny on receipts and drafts may be denoted either by stamps impressed on the paper, or by adhesive stamps.

Adhesive

Sect. 4.—Where an adhesive stamp is used, it must be cancelled

by the person signing the document, by writing his name, or the initials of his name, upon it, so as to prevent its being again made use of.

Stamps to be cancelled.

Sect. 5.—A penalty of 20*l.* is imposed on any person who shall get off an adhesive stamp; or affix on paper, or use one that has been removed from other paper; or who shall practise any fraudulent act or contrivance with intent to defraud the revenue in respect of those duties.

Frauds as to adhesive stamps.

Sect. 6.—Policies of insurance on lives are required to be made out on stamps within a month, under a penalty of 50*l.* Any managing director, secretary, or other principal officer of a company making any insurance to be liable to this penalty.

Life policies to be made out.

Sect. 7.—Clerks to attorneys articled on 60*l.* stamps, for admission in the County Palatine Courts, may have their articles stamped, to entitle them to admission in the Superior Courts, on payment of the difference of duty only.

Admission to Superior Courts of clerks to attornies of Counties Palatine.

Sect. 8.—In Scotland, additional inventories of a deceased's effects require only to be stamped with the additional duty, instead of the whole duty as heretofore.

Additional inventories in Scotland.

Sect. 9.—Licences for performing divine service in approved buildings, whilst the parish church is under repair, or where the church is remote, are exempted from duty.

Certain licences to spiritual persons exempt.

Sect. 10.—Conveyances upon sale of property under mortgage are to be chargeable with *ad valorem* duty in respect of the mortgage money, whether the purchaser becomes liable to pay the mortgage money or not. This provision was absolutely necessary, in order to prevent further injury to the revenue by the decision of the Court of Exchequer on a case * under the 13 & 14 Vict. c. 97, s. 15, in which their Lordships held, contrary to all previous experience, and the uniform interpretation put upon the statute by practitioners, and, it may be said, the necessary, if not obvious intention of the Legislature, that where an incumbered estate is purchased, the incumbrance, although it is a portion of the value of the property, and must be paid off by the purchaser before he can make his purchase available, is not to be deemed a part of the consideration upon which *ad valorem* duty is to be charged, unless he makes himself personally answerable for it; the Court considering that the words of the 55 Geo. III. c. 184, to be found in a note under the head "Conveyance" in the Schedule, "to be afterwards paid by the purchaser," must be held to mean "covenanted or agreed" to be paid. The point raised in this case upon which judgment was given was quite a secondary one, the principal question being

Conveyances on sale of property subject to mortgages, to be charged with duty on the mortgage money in all cases.

* *Marquis of Chandos and the Commissioners of Inland Revenue*, 6 Exch. 464

whether the deed was a conveyance upon sale or not; and it was a mere accident that the attention of counsel for the Crown was called to the point at all. The loss to the revenue occasioned by the decision is known to be very great; but there was no appeal.

Where sold for redeemable annuities.

Sect. 11.—Property sold in consideration of a redeemable annuity or rent-charge is to be chargeable with *ad valorem* duty on the sum for which the redemption is allowed. This provision is also in consequence of a judgment of the Court on a case submitted under the same clause; it having been held that *ad valorem* duty was payable only where the redemption could be enforced by the vendor. The point is not, perhaps, of much importance, since, by the other Stamp Act of the same session (c. 63), *ad valorem* duties are imposed on conveyances in consideration of annuities or rent-charges, at the same rate as conveyances upon sale for money in gross, calculated at about twenty-five years' purchase.

Denoting stamp on counterparts of leases not necessary.

Sect. 12.—Counterparts of leases are not to require the denoting stamp in any case. This will be found to be a great relief to the public, as well as to the officers. A counterpart of a lease is always to be distinguished from the original, for which it can never be substituted.

Adjudication where deed not chargeable.

Sect. 13.—This is an extension of the 13 & 14 Vict. c. 97, s. 14, which authorizes the commissioners to adjudicate as to the sufficiency of the stamp duty impressed on any instrument. This clause enables them to adjudge that an instrument is not chargeable with any duty.

Certain transfers of bonds not chargeable.

Sect. 14.—Public companies borrowing money on their bonds or mortgages may render all transfers of such securities exempt from stamp duty by paying, in the first instance, quadruple duties.

Postage stamps may be carried about for sale.

Sect. 15.—Letter-carriers, specially authorized by the Postmaster-General, may carry about, for sale, postage stamps without requiring to be licensed as hawkers.

Playing cards.

Sect. 16.—This clause is for preventing the evasion of the duties on playing cards, and is aimed, chiefly, at what are usually termed "cut-corner" cards.

Exemption of officers.

Sect. 17.—The exemption hitherto given by statute to Excise officers only from serving certain offices is extended to all officers of Inland Revenue.

Spoiled stamps.

Sect. 18.—Stamps rendered useless by this Act may be allowed as spoiled.

Bankers relieved from proving indorsement of bills to order on demand.

Sect. 19.—Drafts *on demand* payable to *bearer*, or to *order*, are by this Act chargeable only with a penny duty; which will enable persons residing at a greater distance than fifteen miles from their bankers to draw cheques on penny stamps; and, for security, to

make them payable to order; but for the indemnity of bankers it is by this clause provided, that it shall not be incumbent on them to prove any indorsement on any such document which, when presented, shall purport to be indorsed by the person to whose order it is drawn.

Stamp duties in Ireland granted by 5 & 6 Vict. c. 82, made perpetual.

Sect. 20.—The stamp duties in Ireland granted by the 5 & 6 Vict. c 82, whereby the duties in both parts of the kingdom were, for the most part, assimilated, and which have been continued, from time to time, with alterations, and made coeval with the property and income tax in Great Britain, are made perpetual as reduced or otherwise altered by subsequent Acts.

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16 & 17 VICT. c. 63.

[Royal Assent, 4th Aug., 1853.]

New Duties.

Sect. 1.—This Act grants reduced duties on ARTICLES of CLERKSHIP and ATTORNEYS' CERTIFICATES; and new duties on CONVEYANCES in consideration of *Annuities* or *Rent-charges;* ASSIGNMENTS of JUDGMENTS in Ireland; WRITS of ACKNOWLEDGMENT in Scotland; and SCRIP CERTIFICATES; which commenced on the passing of the Act.

Former provisions.

Sect. 2.—The provisions of all former Acts, together with the exemptions, are kept in force in reference to the foregoing duties.

Newspapers.

Sect. 3.—Newspapers may be published on larger paper than heretofore without additional duty; and Supplements, hitherto charged with the duty of one halfpenny, are in certain cases declared to be free from duty. But where a newspaper is printed on several sheets or parts of sheets, one of them not being, in fact, a supplement, and so stated to be, in conformity with the 6 & 7 Will. IV. c. 76, s. 5, every such sheet or part of a sheet is chargeable with the duty of one penny.

Sect. 4.—Newspaper stamps rendered useless by the Act may be allowed as spoiled.

Sect. 5.—This clause repeals the duties on advertisements.

Certain other new duties.

Sect. 6.—Imposes new duties on assignments of judgments in Ireland, and on writs of acknowledgment in Scotland (*vide* TABLE).

Sect. 7.—Bankers in Scotland may compound for the duties on their bills and notes.

Sect. 8—Imposes a duty on Scrip Certificates (*vide* TABLE).

Exemption.

Sect. 9.—Receipts for taxes to be exempt from duty.

Adhesive stamps on policies.

Sects. 10, 11.—The duties on policies of assurance on lives may be denoted either by an impressed or an adhesive stamp. On the latter stamp, whenever used, certain particulars are to be written.

Stamp Duties.

13 & 14 Vict. c. 97.

An Act to repeal certain Stamp Duties, and to grant others in lieu thereof; and to amend the Laws relating to the Stamp Duties.

[14th August, 1850.]

55 Geo. III. c. 184.

Whereas by an act passed in the fifty-fifth year of the reign of king George the third, intituled "An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, and the Duties on Fire Insurances, and on Legacies, and Successions to Personal Estate upon Intestacies, now payable in Great Britain, and for granting other Duties in lieu thereof," certain stamp duties specified and contained in a schedule to the said Act annexed were granted and made payable in and throughout Great Britain, for and in respect of the several instruments, matters, and things described or mentioned in the said schedule: And whereas by an act passed in the third year of the reign of king George the fourth, intituled "An Act to reduce the Stamp Duties on Reconveyances of Mortgages and in certain other Cases, and to amend an Act of the last Session of Parliament for removing Doubts as to the Amount of certain Stamp Duties in Great Britain and Ireland respectively," certain stamp duties therein mentioned or referred to were repealed, and in lieu thereof certain other stamp duties in the said last-recited act specified were granted and made payable in and throughout Great Britain and Ireland respectively: And whereas by an act passed in the sixth year of the reign of her present Majesty, intituled "An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same until the Tenth day of October, One thousand eight hundred and forty-five," certain of the said stamp duties granted by the said first-recited Act were extended to and made payable in Ireland; and under and by virtue of the said three several Acts, and also of two other Acts passed respectively in the eighth and eleventh years of her Majesty's reign, for continuing the said last-recited Act, the said stamp duties are now payable in Great Britain and Ireland respectively: And whereas it is expedient to repeal certain of the said stamp duties, so far as the same relate to the several instruments, matters, and things mentioned and described in the schedule to this Act annexed, and to substitute in lieu thereof other rates of duties for and in respect of the same instruments, matters, and things: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the tenth day of October, one thousand eight hundred and fifty, the several stamp duties now payable in Great Britain and Ireland respectively, under or by virtue of the said several Acts hereinbefore recited or referred to, or any of the said Acts respectively, or any other Act or Acts, for or in respect of the several instruments, matters, and things described or mentioned in the said schedule to this Act annexed, and whereon other duties are by this Act granted and imposed, shall respectively cease and determine, and shall be and the same are hereby repealed, and in lieu and instead thereof there shall be granted, raised, levied, collected, and paid in and throughout the united kingdom of Great Britain and Ireland, unto and for the use of her Majesty, her heirs and successors, for and in respect of the said several instruments, matters, and things, or for or in respect of the

3 Geo. IV. c. 117.

5 & 6 Vict. c. 82.

8 & 9 Vict. c. 2.

11 & 12 Vict. c. 9.

Stamp duties on instruments specified in the annexed schedule repealed.

vellum, parchment, or paper, upon which the same respectively shall be written, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the said last-mentioned schedule, and that the said last-mentioned schedule, and the several provisions, regulations, and directions therein contained with respect to the said duties, and the instruments, matters, and things charged therewith, shall be deemed and taken to be part of this Act, and shall be applied, observed, and put in execution accordingly: Provided always, that nothing herein contained shall extend to repeal or alter any of the said duties now payable in relation to any deed or instrument which shall have been signed or executed by any party thereto, or which shall bear date before or upon the said tenth day of October, one thousand eight hundred and fifty.

Duties granted to be denominated stamp duties, and to be under the care of the Commissioners of Inland Revenue.

Sect. 2.—And be it enacted, That the said duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and that all powers, provisions, clauses, regulations, directions, and exemptions, fines, forfeitures, pains, and penalties, contained in or imposed by the said recited Act of the fifty-fifth year of the reign of king George the third, and the schedule thereto annexed, and in or by any other Act or Acts, relating to any duties of the same kind or description heretofore payable in Great Britain and Ireland respectively, and in force at the time of the passing of and not repealed by this Act, shall respectively be of full force and effect with respect to the duties by this Act granted, and to the vellum, parchment, and paper, instruments, matters, and things, charged and chargeable therewith, and to the persons liable to the payment of the said duties, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the express provisions of this Act, as fully and effectually, to all intents and purposes, as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the said duties by this Act granted, and the said schedule annexed to the said Act of the fifty-fifth year of the reign of king George the third and the said schedule to this Act annexed shall be read and construed as one schedule and as one Act.

Powers and provisions of former Acts to be in force and be put in execution with regard to the duties hereby granted.

Duties not to be charged on deeds or instruments expressly exempted from stamp duty by existing Acts.

Sect. 3.—Provided always, and be it enacted, That nothing in this Act, or in the schedule hereto annexed contained shall extend or be deemed or construed to extend to charge with stamp duty any deed or instrument which by any Act or Acts now in force is expressly exempted from all stamp duty; or to subject or charge any transfer or assignment of any share in the stock and funds of the governor and company of the Bank of England, or of the South Sea Company, or of the East India Company respectively, to or with any higher or other stamp duty than such transfers and assignments are respectively subject and liable to under any Act or Acts now in force.

Duties imposed by 5 & 6 Vict. c. 82, and 9 & 10 Vict. c. 112, on certain leases in Ireland, repealed.

Sect. 4.—And be it enacted, That the duties imposed by the said Act of the sixth year of her Majesty's reign upon any lease, release, or deed, minute, memorandum, or legal or equitable article or instrument for setting or demising lands, tenements, or hereditaments in Ireland, in the manner in the said Act mentioned, and also the duty imposed by an Act passed in the tenth year of her Majesty's reign, intituled "An Act to facilitate and encourage the granting of certain Leases for Terms of Years in Ireland," on any lease in the said last-mentioned Act described, shall, so far as the same respectively relate to any such lease, release, or deed, minute, or memorandum, article, or instrument as aforesaid which shall bear date after the said tenth day of October, one thousand eight hundred and fifty, be and the same are hereby repealed; and every such lease, release, or deed, minute, memorandum, or legal or equitable article or instrument last-mentioned shall be and become subject and liable to and chargeable with the duties imposed by this Act and the said Act

of the fifty-fifth year of the reign of king George the third respectively, on deeds and instruments of the like kind or description.

For removing doubts as to stamp duties on certain agreements for setting or demising lands in Ireland.

Sect. 5.—And whereas by an Act passed in the seventh year of her Majesty's reign the stamp duty on an agreement or minute, or memorandum of an agreement, under hand only, and in the said last-mentioned Act more particularly described, was reduced to the sum of two shillings and sixpence: And whereas doubts have arisen as to whether the said reduced duty extends to agreements or other instruments under hand only for setting or demising lands, tenements, or hereditaments in Ireland at a yearly rent not exceeding fifty pounds; and it is expedient to remove such doubts: Be it therefore declared and enacted, That no agreement or minute, memorandum, or legal or equitable article or instrument, under hand only, made or to be made at any time since the sixth day of June, one thousand eight hundred and forty-four, and before or upon the tenth day of October, one thousand eight hundred and fifty, for setting or demising lands, tenements, or hereditaments in Ireland at any yearly rent not exceeding fifty pounds, shall be held or deemed to be or to have been subject or liable to any higher amount of stamp duty than the said reduced duty of two shillings and sixpence payable on an agreement or minute, or memorandum of an agreement, under hand only, by virtue of the said Act of the seventh year of her Majesty's reign.

Preamble.

Sect. 6.—And whereas under or by virtue of the said several Acts hereinbefore recited, or some of them, certain stamp duties are now payable for or in respect of any bargain and sale, or lease for a year, for vesting the possession of lands or other hereditaments, and enabling the bargainee to take a release of the freehold or inheritance: And whereas by an Act passed in the fourth year of the reign of her present Majesty, intituled "An Act for rendering a release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties," it is provided, that every deed or instrument taking effect under the said last-mentioned Act in the manner therein mentioned shall be chargeable with the same amount of stamp duty as any bargain and sale or lease for a year would have been chargeable with (*except progressive duty*) if executed to give effect to such deed or instrument, in addition to the stamp duties, which such deed or instrument shall be chargeable with as a release or otherwise under any Act or Acts relating to stamp duties: And whereas by an Act passed in the ninth year of the reign of her present Majesty, intituled "An Act to amend the Law of Real Property," it is enacted that every deed which by force only of the said last-mentioned Act shall be effectual as a grant shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release founded on a lease or bargain and sale for a year, and also with the same stamp duty (*exclusive of progressive duty*) with which such lease or bargain and sale for a year would have been chargeable: And whereas it is expedient to repeal the said stamp duties now payable for or in respect of any such bargain and sale or lease for a year as aforesaid, and also to repeal so much of the said two several Acts last-mentioned as imposes upon any deed or instrument the said additional stamp duty as for a bargain and sale or lease for a year: Be it therefore enacted, That the said duties now payable for or in respect of any such bargain and sale or lease for a year as aforesaid, and also so much of the said two several last-mentioned Acts as is hereinbefore recited, shall, so far as the same respectively relate to any deed or instrument which shall bear date after the said tenth day of October, one thousand eight hundred and fifty, be and the same are hereby repealed.

4 & 5 Vict. c. 21.

8 & 9 Vict. c. 106.

Stamp duties on a bargain and sale, and so much of said two Acts as is recited, repealed.

Preamble.

Sect. 7.—And whereas by the said recited Act of the fifty-fifth year of the reign of king George the third, and the schedule thereto annexed, it is provided, that where any freehold lands or hereditaments shall be conveyed by a deed of feoffment or by a deed of bargain and sale enrolled, such deed of feoffment or bargain and sale, unless accompanied with a lease and release, shall be charged with such further duty as in the said last-mentioned schedule is specified and contained in that behalf: Be it enacted, That so much of the said last-mentioned

Additional duty on a conveyance

Act and of the said schedule as charges such deed of feoffment or bargain and sale with any such further duty shall, as to any such deed as aforesaid which shall bear date at any time after the tenth day of October, one thousand eight hundred and fifty, be and the same is hereby repealed.

by feoffment or bargain and sale enrolled, repealed.

Sect. 8.—And be it enacted, That if any person shall have received or gotten into his hands, or shall receive or get into his hands, any sum or sums of money as and for the stamp duty upon or in respect of any deed, instrument, or transaction, or intended deed, instrument, or transaction, or the duty upon or in respect of any legacy or residue and shall improperly neglect or omit to appropriate such sum or sums of money to the due payment of such duty, or shall otherwise by or under any means or pretence whatsoever improperly withhold or detain the same, every such person shall be accountable for the amount of such duty or sum or sums of money, and the same shall be a debt from such person to her Majesty, her heirs and successors, and recoverable as such accordingly; and it shall be lawful for the barons of her Majesty's Court of Exchequer in England, Scotland, or Ireland respectively, upon application to be made for that purpose on behalf of the Commissioners of Inland Revenue, upon such affidavit as to such court may appear sufficient, to grant a rule requiring such person, or his executor or administrator, to show cause why he should not deliver to the said Commissioners an account upon oath of all such duties and sums of money as aforesaid, and why the same should not be forthwith paid to the Receiver-General of Inland Revenue, or to such person as the said Commissioners shall appoint or authorize to receive the same; and it shall be lawful for such court to refer the taking or auditing of any such account to the proper officer of such court, who shall examine any such person as a debtor or alleged debtor to the crown, on personal interrogatories, if such court shall think proper so to do; and it shall be lawful for such court to make absolute any such rule as aforesaid in every case in which the same may appear to such court to be proper and necessary, and to enforce by attachment or otherwise the payment of any such duties or sums of money as on such proceedings shall appear to such court to be due, together with the costs of all such proceedings.

All persons receiving moneys for stamp duties, and misappropriating the same, to be liable for the amount, and the Court of Exchequer to enforce payment thereof.

Sect. 9.—And whereas doubts have arisen as to certain stamp duties in Great Britain and Ireland respectively payable under the said Act of the fifty-fifth year of the reign of king George the third, the said Act of the third year of the reign of king George the fourth, and the several Acts respectively therein recited or mentioned, and the said Act of the sixth year of the reign of her present Majesty, or under some or one of the said several Acts respectively, upon or in respect of certain deeds or instruments hereinafter mentioned, and it is proper that such doubts should be removed: Be it therefore enacted and declared, That any transfer or assignment, disposition or assignation, already made, or which on or before the tenth day of October, one thousand eight hundred and fifty, may be made, of any mortgage or wadset or of any other security in the said Acts or any of them mentioned, or of the benefit thereof, or of the money or stock thereby secured, shall not, by reason of its containing, [either by the mortgagor or by any person entitled to the property mortgaged by descent, devise, or bequest from such mortgagor (*a*)], any further or additional security for the payment or transfer or re-transfer of such money or stock, or any interest or dividends thereon, or any new covenant, proviso, power, stipulation, or agreement, or other matter whatever, in relation to such money or stock, or the interest or dividends thereon, or by reason of its containing all or any of such matters, be or be deemed to be liable to any further or other duty (*except progressive duty*) than the duty hereinafter mentioned; (that is to say,) where no further money or stock has been or shall be added to the principal money or stock already secured, a stamp duty of one pound fifteen shillings, and where

For removing doubts as to the duties upon transfers of mortgages.

(*a*) The words within brackets, which give a limited effect to the provision, will be found, also, in the schedule imposing the new duties; they were not in the clause as prepared by the Government, but were inserted at the instance of a Member in Committee; or, rather, formed part of the clause substituted for that so prepared.

any further sum of money or stock has been or shall be added to the principal money or stock already secured, the same stamp duty only as on a mortgage or wadset for such further sum or stock; and that any deed or instrument, either by the mortgagor or by any person entitled as aforesaid, already made or which may be made as aforesaid, operating or intended to operate as a further charge or as a security for any further or additional money or stock advanced upon any property already comprised in any mortgage or other security, shall not by reason of its containing all or any of the matters aforesaid, in relation to the money or stock previously secured, or the interest or dividends thereon, be deemed to be liable to any further or other stamp duty than the duty chargeable on an original mortgage for the further or additional money or stock in and by such deed of further charge or security charged or secured, or intended so to be.

For affording relief in certain cases of leases.

Sect. 10.—And whereas numerous leases have been from time to time granted upon or after sales made in consideration of money paid to some other person or persons than the lessor, without stamping such leases with any *ad valorem* stamp in respect of such pecuniary consideration, the parties to such leases conceiving that the provisions of the several Acts now in force requiring the consideration to be set out, and imposing an *ad valorem* duty thereon, did not apply to any other consideration than that passing between the lessor and lessee; but inasmuch as doubts have arisen on the subject, it is reasonable that such relief as is hereinafter mentioned should be afforded in such cases: Be it therefore enacted and declared, That no lease made and executed before the twentieth day of March, one thousand eight hundred and fifty, shall be adjudged, deemed, or taken to be improperly stamped by reason of there not being an *ad valorem* stamp impressed thereon for or in respect of any pecuniary consideration which may have been paid or may be therein expressed to be paid by the lessee to any other person or persons than the lessor, and that the seller and the lessee respectively in any such lease, and any attorney, solicitor, writer to the signet, or other person employed in or about the preparation or completion of the same, shall be exempted from all penalties and other liabilities for or by reason of any default in setting forth any such pecuniary consideration as aforesaid.

For removing doubts regarding progressive duties.

Progressive duties not to be charged on deeds or instruments in respect of other deeds or instruments duly stamped and referred to therein.

Sect. 11.—And whereas, by the several Acts now in force relating to the stamp duties as well as by this Act, certain stamp duties called progressive duties are imposed upon deeds and instruments in respect of certain quantities of words contained therein, together with any schedule, receipt or other matter put or endorsed thereon or annexed thereto: And whereas doubts are entertained whether such progressive duties are chargeable on any deed or instrument in respect of the words contained in any other deed or instrument, liable to stamp duty and duly stamped which may be put or endorsed upon, or annexed to, or referred to in or by such first-mentioned deed or instrument, and it is expedient to remove such doubts: Be it therefore declared and enacted, That the said progressive duties shall not be deemed or held to be or to have been imposed or chargeable upon any deed or instrument in respect of the words or any quantity of the words contained in any other deed or instrument liable to stamp duty and duly stamped which may be or may have been put or endorsed upon or annexed to such first-mentioned deed or instrument, or which may be or may have been in any manner incorporated with or referred to in or by the same.

Terms and conditions on which deeds, &c., may be stamped after the signing thereof.

Sect. 12.—And whereas, for securing the due payment of the stamp duties imposed by law on deeds and other instruments, it is expedient to alter the terms and conditions on which any such deed or instrument may be stamped after the execution or signing thereof: Be it therefore enacted, That where any deed or instrument liable by law to any stamp duty shall be written on vellum, parchment, or paper, and shall be signed or executed by any person before such vellum, parchment, or paper shall be duly stamped for denoting the payment of the said duty, then and in every such case there shall be due, answered, and paid to her Majesty, her heirs and successors, the

whole or (as the case may be) the deficiency of the stamp duty payable upon or in respect of such deed or instrument, and there shall also be paid and payable, over and above the said duty or deficiency of duty, by way of penalty, and in lieu of any former penalty imposed or made payable by law in the like case, the sum of ten pounds; and where the whole amount of the duty or deficiency of duty, as the case may be, to be denoted by the stamp or stamps required to be impressed on such deed or instrument when the same shall be brought to be stamped shall exceed the sum of ten pounds, there shall be paid by way of penalty, in addition to the said sum of ten pounds. interest on the said duty or deficiency of duty computed at the rate of five pounds *per centum per annum* from the date or first signing or execution of such deed or instrument; provided, that if such interest shall exceed in amount the said duty or deficiency of duty, then there shall be paid by way of penalty, in addition to the said duty or deficiency of duty, and the said sum of ten pounds, and in lieu of the said interest, a sum equal to the amount of the said duty or deficiency of duty; and the Commissioners of Inland Revenue are hereby required, upon payment of the said duty or deficiency of duty, and of the said sum or sums hereinbefore directed to be paid by way of penalty, to cause such deed or instrument to be duly stamped with a stamp or stamps for denoting the payment of such duty or deficiency, and also with a stamp for denoting the payment of a penalty, in lieu of the receipt heretofore required by any Act to be written or given for such penalty; and no such deed or instrument shall be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, until the same shall be duly stamped in manner aforesaid: Provided always, that where it shall appear to the Commissioners of Inland Revenue, upon oath or otherwise, to their satisfaction, that any deed or instrument hath not been duly stamped previously to being signed or executed by reason of accident, mistake, inadvertency, or urgent necessity, and without any wilful design or intention to defraud her Majesty, her heirs or successors, of the duty chargeable in respect thereof, or to evade or delay the payment of such duty, then and in any such case, if such deed or instrument shall within twelve calendar months after the first signing or executing of the same by any person be brought to the said Commissioners in order to be stamped, and the stamp duty chargeable thereon by law shall be paid, it shall be lawful for the said Commissioners, if they shall think fit, to remit the whole or any part of the penalty payable on stamping such deed or instrument, and to cause such deed or instrument to be duly stamped, upon payment of the whole, or, as the case may be, the deficiency of the stamp duty chargeable thereon by law, and either with or without any portion of the said penalty; and thereupon every such deed or instrument shall be as valid and available in the law as it would have been if it had been duly stamped before the signing or executing of the same: Provided also, that nothing herein contained shall extend or be deemed or construed to extend to any deed or instrument for the stamping of which after the signing or execution thereof provision is specially made by any law now in force, or to any deed or instrument the stamping of which after the signing or execution thereof is expressly prohibited or restricted by any such law as aforesaid, or to repeal, alter, or affect any such provision, prohibition, or restriction.

Commissioners of Inland Revenue authorized to remit the penalty on stamping deeds, &c., within twelve months after the signing thereof.

Not to extend to instruments for the stamping of which special provision is made, nor where the stamping is prohibited.

Sect. 13.—Provided always, and be it enacted, That it shall be lawful for the Commissioners of Inland Revenue to order and direct that any deed or instrument which shall have been or shall or may be signed or executed by any party thereto at any place out of the United Kingdom may be duly stamped, upon payment of the proper stamp duty payable thereon, and without payment of any additional duty or penalty, provided such deed or instrument shall be brought to the said Commissioners to be stamped as aforesaid within the space of two calendar months from the time when the same shall have been received in the United Kingdom, and provided proof shall be first made to the satisfaction of the said Commissioners of the facts aforesaid.

Commissioners may stamp instruments executed abroad, without any penalty, within two months after their arrival in the United Kingdom.

For removing doubts as to the sufficiency of stamp duty paid on deeds.

Sect. 14.—And whereas doubts frequently arise as to the stamp duties with which some deeds or instruments are chargeable, and it is expedient that provision should be made whereby such doubts may be removed: Be it therefore enacted, That when any deed or instrument liable to stamp duty, whether previously stamped or otherwise, shall be presented to the Commissioners of Inland Revenue at their office, and the party presenting the same shall desire to have the opinion of the said Commissioners as to the stamp duty with which such deed or instrument in their judgment is chargeable, and shall tender and pay to the said Commissioners a fee of ten shillings (which shall be accounted for and paid over as part of her Majesty's revenue arising from stamp duties), it shall be lawful for the said Commissioners, and they are hereby required to assess and charge the stamp duty to which in their judgment such deed or instrument is liable, and upon payment of the stamp duty so assessed and charged by them, or, in the case of a deed or instrument insufficiently stamped, of such a sum as, together with the stamp duty already paid thereon, shall be equal to the duty so assessed and charged, and upon payment also of the amount, if any, payable by way of penalty on stamping such deed or instrument, to stamp such deed or instrument with the proper stamp or stamps denoting the amount of the duty so paid, and thereupon, or if the full stamp duty to which in the judgment of the said Commissioners such deed or instrument shall be liable shall have been previously paid and denoted upon the same in manner aforesaid, the said Commissioners shall impress upon such deed or instrument a particular stamp to be provided by them for that purpose, with such word or words or device or symbol thereon as they shall think proper in that behalf, and such last-mentioned stamp shall be deemed and taken to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid, and every deed or instrument upon which the same shall be impressed shall be deemed to have been duly stamped, and shall be receivable in evidence in all courts of law or equity, notwithstanding any objection made to the same as being insufficiently stamped; save and except that such last-mentioned stamp shall not be impressed upon any deed or instrument chargeable with *ad valorem* duty under or by reference to the head of bond or mortgage in the schedule to this Act, where the same is made as a security for the payment or transfer or re-transfer of money or stock without any limit as to the amount thereof; and provided always, that nothing herein contained shall be deemed or construed to extend to require or authorize the said Commissioners to stamp as last aforesaid any probate of a will or letters of administration, or to stamp as last aforesaid any deed or instrument after the signing or execution thereof, in any case in which the stamping thereof is expressly prohibited by any law in force.

Party dissatisfied with the determination of the commissioners as to the stamp duty chargeable may appeal to the Court of Exchequer, and the duty shall be paid according to the decision of the court.

Sect. 15.—Provided always, and be it enacted, That if the party presenting such deed or instrument to the said Commissioners as aforesaid for their opinion as to the stamp duty with which the same is chargeable shall declare himself dissatisfied with the determination made by them in that behalf, it shall be lawful for such party, upon paying the amount of the stamp duty according to such determination, and depositing with the said Commissioners the sum of forty shillings for costs and charges to be paid by him in the event hereinafter provided for, to require the said Commissioners to state specially and to sign the case on which the question with respect to such stamp duty arose, together with their determination thereupon, which case the said Commissioners are hereby required to state and sign accordingly, and to cause the same to be delivered to the party making such request as aforesaid in order that he may appeal against such determination to her Majesty's Court of Exchequer at Westminster; and upon the application of the said party (due notice thereof being given to the Solicitor of Inland Revenue to the end that counsel may be heard on behalf of the said Commissioners) it shall be lawful for the said Court of Exchequer, and the said Court is hereby required, to hear and determine the said appeal, and to decide as to the stamp duty with which such deed or

instrument is chargeable, and according to such decision the stamp duty and penalty (if any) which shall have been the subject of such case shall be deemed to have been payable by law; and if no excess of stamp duty or penalty shall have been paid to the said Commissioners by the said appellant, over and above the sum which, according to the decision of the said Court ought to have been paid upon or in respect of such deed or instrument, the said sum of forty shillings deposited for costs and charges as aforesaid shall be applied to the use of her Majesty's revenue; but if any such excess as aforesaid shall have been so paid by the said appellant, the same, together with the said sum of forty shillings deposited as aforesaid, shall be repaid by the said Commissioners to the said appellant; and if the sum paid for stamp duty or penalty upon or in respect of such deed or instrument shall fall short of the amount which, according to the decision of the said Court upon any such appeal, is chargeable or ought to be paid upon or in respect of such deed or instrument, the deficiency of such stamp duty or penalty, or both, as the case may be, shall be paid by the said appellant to the said Commissioners, and the Court shall order and enforce the payment thereof accordingly.

Conveyances, mortgages, and settlements of property under contract or obligation before 20th March, 1850, exempted from any increased *ad valorem* duty.

Sect. 16.—And be it enacted, That where any lands or other property shall have been actually and *bonâ fide* contracted to be sold prior to the twentieth day of March, one thousand eight hundred and fifty, by any contract or agreement in writing duly stamped, or shall have been actually and *bonâ fide* sold under the decree of any court made prior to the said twentieth day of March, and the same shall be conveyed to the purchaser or any other person by his direction, after the tenth day of October, and before or on the thirty-first day of March one thousand eight hundred and fifty-one, or where any lands or other property shall have been actually and *bonâ fide* contracted to be mortgaged prior to the said twentieth day of March, one thousand eight hundred and fifty, and the abstract of title of the mortgagor to such lands or other property shall have been actually delivered to the intended mortgagee or his solicitor prior to the said twentieth day of March, one thousand eight hundred and fifty, and the same mortgage shall be executed after the said tenth day of October, and before or on the thirty-first day of March, one thousand eight hundred and fifty-one, or where any deed or instrument liable to the *ad valorem* duty by this Act granted under the head of "Settlement," in the schedule to this Act shall be executed after the said tenth day of October, and before or on the thirty-first day of March one thousand eight hundred and fifty-one, in pursuance of an obligation contained in any deed, will, or other instrument which was actually and *bonâ fide* in force and obligatory upon the party executing the same prior to the said twentieth day of March, one thousand eight hundred and fifty, or in pursuance of the decree of any Court made prior to that day, the principal or only deed or instrument whereby such lands or other property as aforesaid shall be conveyed or mortgaged respectively, and the principal or only deed chargeable with *ad valorem* duty by this Act granted under the head of "Settlement" in the schedule hereto, shall be exempt from any *ad valorem* duty of a greater amount than would have been payable on such deed or instrument respectively if this Act had not been passed; but in order to prevent frauds such deed or instrument shall be produced on or before the thirtieth day of April, one thousand eight hundred and fifty-one, duly executed and duly stamped, to the Commissioners of Inland Revenue, and upon its being proved to their satisfaction that the lands or other property therein comprised were actually and *bonâ fide* contracted to be sold as aforesaid, or were actually and *bonâ fide* sold under the decree of any court made prior to the said twentieth day of March, one thousand eight hundred and fifty, or that such lands or other property therein comprised were actually and *bonâ fide* contracted to be mortgaged as aforesaid, and that the abstract of title thereto was actually delivered as aforesaid, or that such deed or instrument liable to the *ad valorem* duty by this Act, granted under the head of "Settlement" in the schedule to this Act, was executed in

pursuance of an obligation contained in such deed, will, or other instrument so in force and obligatory as aforesaid, or was actually and *bonâ fide* executed in pursuance of the decree of any court made prior to the said twentieth day of March, one thousand eight hundred and fifty, and that such deed or instrument was duly executed on or before the thirty-first day of March, one thousand eight hundred and fifty-one, the said Commissioners of Inland Revenue, or some or one of them, shall sign a certificate of what shall be so proved to their satisfaction upon such deed or instrument, and thereupon such deed or instrument, being stamped with the *ad valorem* duty which would have been payable if this Act had not been passed, shall be as valid and available in the law as if the same had been stamped with the said *ad valorem* duty by this Act granted, but the same shall not without such certificate be given in evidence, or be in any manner available unless stamped with such *ad valorem* duty last-mentioned.

1 & 2 Geo. IV. c. 55.

Sect. 17.—And whereas it is considered that under the provisions of an Act passed in the first and second years of the reign of king George the fourth, intituled "An Act to remove Doubts as to the Amount of Stamp Duties to be paid on Deeds and other Instruments under the several Acts in force in Great Britain and Ireland respectively," any deed, agreement, or other instrument which relates wholly to real or personal property in Ireland, or to any matter or thing (other than the payment of money) to be done in Ireland, cannot after the engrossing thereof properly be stamped elsewhere than at the stamp office in Dublin, and also that any deed, agreement, or other instrument which relates to any real or personal property situate elsewhere than in Ireland, or to any matter or thing (other than the payment of money) to be done elsewhere than in Ireland, cannot after the engrossing thereof properly be stamped elsewhere than at the stamp office in London: And whereas such construction of the said Act as aforesaid is the occasion of inconvenience: Be it therefore enacted and declared, That from and after the passing of this Act any such deed, agreement, or instrument as aforesaid may and shall, without regard to the place where the property, matter, or thing to which the same may relate may be situate or may be to be done, be stamped with such duty or duties as the same may be liable to either at the stamp office in London, or at the stamp office in Dublin, according as the same shall for that purpose be presented at either of the said offices.

Deeds, &c., may be stamped either in London or Dublin.

The allowance on receipt stamps granted by 12 & 13 Vict. c. 80, repealed.

Sect. 18.—And whereas by an Act passed in the thirteenth year of the reign of her said Majesty, intituled "An Act to repeal the Allowances on the Purchase of Stamps, and for the receiving and accounting for the Duties on Gold and Silver plate, and to grant other Allowances in lieu thereof," an allowance at the rate of one pound ten shillings *per cent.* is granted to any person who shall produce at the office of the Commissioners of Inland Revenue in London or Dublin to be stamped, or shall purchase of the said Commissioners at their office in London, Edinburgh, or Dublin, vellum, parchment, or paper stamped with stamps (not being labels for medicines) under the value respectively of ten pounds each, but to the amount or value in the whole of thirty pounds or upwards: And whereas it is expedient to repeal the said allowance so far as relates to stamps for receipts, and to grant another and increased rate of allowance in lieu thereof: Be it therefore enacted, That from and after the passing of this Act the said allowance granted by the said last-mentioned Act, so far as the same relates to stamps for receipts, shall be and the same is hereby repealed, and that in lieu thereof there shall be made and granted the allowance following; (that is to say,) to any person who at one and the same time shall produce at the office of the said Commissioners in London or Dublin paper to be stamped with stamps for receipts to the amount of five pounds or upwards, or shall purchase at the office of the said Commissioners in London, Edinburgh, or Dublin stamps for receipts to the amount of five pounds or upwards, or of any distributor or sub-distributor of stamps at any place not within the distance of ten miles from the said offices respectively to the amount of one

Allowance of 7*l.* 10*s.* per cent. granted.

pound or upwards, an allowance at and after the rate of seven pounds ten shillings *per centum*, provided that no such allowance shall be made for any fraction of a pound.

Reciting 55 Geo. III. c. 101, as to fire insurances in Ireland.

Sect. 19.—And whereas by an Act passed in the fifty-fifth year of the reign of king George the third, intituled "An Act to regulate the Collection of Stamp Duties on Matters in respect of which Licences may be granted by the Commissioners of Stamps in Ireland," it is enacted, that the said Commissioners shall annually grant a licence for insuring houses, furniture, goods, wares, merchandize, or other property from loss by fire to all and every body and bodies politic or corporate or person or persons applying for the same in manner therein mentioned, and that where the business of insurance is carried on by a company consisting of a greater number than four the said licence shall be granted to such two or more of such company or partners, or if such company or partnership shall be a British company or partnership, then to such agent or agents resident in Ireland as shall be named to the said Commissioners; and that no person or persons or body or bodies politic or corporate shall insure, or open or keep any office in Ireland for insuring houses, furniture, goods, wares, merchandize, or other property from loss by fire, without having first taken out and continuing to take out annually a licence for that purpose; and it is also enacted, that all and every person and persons and body or bodies politic or corporate to whom any such licence as aforesaid shall be granted shall at the time of receiving such licence give such security, with sufficient sureties to be approved of by the said Commissioners of Stamps, by bond to his Majesty conditioned for making out, signing, and delivering the accounts of all moneys received for duties upon such insurances, and payment of the same, as therein mentioned: And whereas under and by virtue of an Act passed in the sixth and seventh years of the reign of his late Majesty king William the fourth, intituled "An Act to enable Persons to make Deposits of Stock or Exchequer Bills in lieu of giving Security by Bond to the Postmaster General and Commissioners of Land Revenue, Customs, Excise, Stamps, and Taxes," and of an Act passed in the first and second years of her present Majesty's reign, for amending the said last-mentioned Act, any person from whom any security is required in respect of any matter relating to the revenues of the post office, land revenues, customs, excise, stamps, or taxes is enabled, in lieu of giving such security by bond, to give the same by transfer of stock or deposit of exchequer bills, as therein mentioned: And whereas the giving of security every year by persons in Ireland insuring property from loss or damage by fire on taking out a licence for that purpose is attended with great inconvenience, and it is expedient to provide a remedy for the same: Be it therefore enacted, That every licence which shall be hereafter granted for insuring houses, furniture, goods, wares, merchandize, or other property from loss by fire, under the said Act passed in the fifty-fifth year of the reign of king George the third, shall endure and remain in force from the day of the date thereof for and during all such time as the body politic or corporate to which the same shall be granted, or the person or persons therein named, or any of them, shall continue to insure or carry on the business of fire insurance, or in the case of a company in Ireland not incorporate, so long as the persons named in the licence shall be members or partners, or a member or partner of the company named or described in such licence, and as and for the whole of which the same shall have been granted, anything in any of the said recited Acts or in any other Act contained to the contrary notwithstanding: Provided always, that every person and body politic or corporate to whom any such licence as aforesaid shall be granted shall give security by bond to her Majesty, her heirs and successors, in such sum as the Commissioners of Inland Revenue, or their proper officer in that behalf in Ireland, shall think proper, with sufficient sureties, to the satisfaction of the said Commissioners or officer, or by transfer of stock or deposit of exchequer bills, in pursuance of the said recited Acts in that behalf, for duly and faith-

6 & 7 Will. IV. c. 28, and 1 & 2 Vict. c. 61, as to deposit of stock.

Fire insurance licences in Ireland to be permanent.

Security to be given for payment of duties.

fully keeping, making out, signing, and delivering, in the matter required by any Act of Parliament relating thereto, all and every the accounts by any such Act required to be kept, made out, signed, and delivered by persons and bodies politic or corporate to whom licence is granted for insuring houses, furniture, goods, wares, merchandize, or other property from loss by fire, and for duly and faithfully paying, as required by any such Act, the duties which shall appear to be due on such accounts respectively, and for truly and faithfully observing and performing all the directions, matters, and things contained in the said Acts, on the part of such licensed person or body politic or corporate to be observed and performed, and every such security to be given under any of the said Acts, whether by bond, or transfer or deposit of stock or exchequer bills, and in the case of any such transfer or deposit in or into whose name or names soever, together with the name of the chairman of the Commissioners of Inland Revenue for the time being, the stock or exchequer bills shall be or be transferred or deposited, shall continue and be a security for the due performance of all things required as aforesaid, not only during all such time as the licence to which the same shall relate shall be in force, but in the case of bodies politic or corporate or companies not incorporate in Ireland, during all such time as the body politic or corporate or the company not incorporate named or described in such licence shall insure any such property from loss by fire, or shall carry on the business of such insurance, whether any such licence shall be in force or not, or otherwise, according to the conditions of any such bond, or the terms or conditions of any declaration relating to any such stock or exchequer bills, and such stock or exchequer bills may, when the security for which the same was or were transferred or deposited shall be no longer necessary, be transferred or delivered up to any of the persons who for the time being shall be a partner or member or partners or members of the company for or on whose behalf the same was or were transferred or deposited, or otherwise, according to the terms, if any, in that behalf mentioned and contained in any such declaration as the said chairman for the time being shall think proper: Provided always, that every such security shall be renewed from time to time as often as any such bond shall become forfeited, or any of the parties thereto shall die, or become bankrupt or insolvent, or reside in parts beyond the seas, and also as often as the said Commissioners or their said officer shall think fit, and in such amount as they or the Commissioners of her Majesty's Treasury shall direct, whether the same shall be by bond or transfer or deposit as aforesaid, and in the event of any neglect or refusal to renew the same, when required by this Act, or by the said Commissioners of Inland Revenue or their said officer, it shall be lawful for the said last-mentioned Commissioners to revoke the licence which shall have been granted to the body politic or corporate, or company, or person or persons, neglecting or refusing to renew such security, to insure property from loss by fire, and thenceforth such licence shall cease and determine

The security to continue in force so long as the person to whom the licence is granted or the company shall continue to insure

The security to be renewed.

Construction of certain terms used in Stamp Acts

Sect 20 —And in order to avoid the frequent use of divers terms and expressions, and to prevent any misconstruction of the terms and expressions used in this or any other Act relating to stamp duties, be it enacted, That wherever in this Act or in any other such Act as aforesaid, with reference to any person, offence, matter, or thing, any word or words is or are or have been or shall be used importing the singular number or the masculine gender only, yet such words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and that wherever the several words, terms, or expressions following are or shall be used in this Act or in any other such Act as aforesaid, with reference to any deed or instrument, they shall be construed respectively in the manner hereinafter directed, (that is to say,) the word "write" or the word "written" shall be respectively deemed

to mean and include the several words "print" or "printed," or "partly write and partly print," or "partly written and partly printed," as well as "write" or "written."

Sect. 21.—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

Act may be amended or repealed this session.

SCHEDULE.

For the duties contained in the Schedule annexed to this Act, see the subjoined TABLE under the following heads, viz.—

Agreement, Bond, Charter, Conveyance upon Sale, Copyhold Estates, Covenant, Duplicate or Counterpart, Lease, Memorial, Mortgage, Precept, Progressive Duty, Resignation, Schedule, Seisin, Settlement, Warrant of Attorney.

16 & 17 VICT. c. 59.

An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, to amend the Laws relating to Stamp Duties, and to make perpetual certain Stamp Duties in Ireland.

[4th August, 1853.]

Whereas it is expedient to repeal the stamp duties now payable in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and to impose other stamp duties in lieu thereof, and it is also expedient to amend the laws relating to the stamp duties: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Stamp duties on instruments in the schedule annexed repealed, and others granted in lieu.

Sect. 1.—From and after the tenth day of October, one thousand eight hundred and fifty-three, the several stamp duties now payable in Great Britain and Ireland respectively, under or by virtue of any Act or Acts of Parliament for or in respect of the several instruments, matters, and things mentioned or described (otherwise than by way of exception) in the schedule to this Act annexed, and whereon other duties are by this Act granted, shall respectively cease and determine, and shall be and the same are hereby repealed; and in lieu and instead thereof there shall be granted, raised, levied, collected, and paid in and throughout the United Kingdom of Great Britain and Ireland, to and to the use of her Majesty, her heirs and successors, for and in respect of the several instruments, matters, and things described or mentioned in the said schedule, or for or in respect of the vellum, parchment, or paper upon which any of them respectively shall be written, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the said schedule, which said schedule, and the several provisions, regulations, directions, and exemptions therein contained with respect to the said duties, and the instruments, matters, and things charged therewith or exempted therefrom shall be deemed and taken to be part of this Act, and shall be applied, observed, and put in execution accordingly: Provided always, that nothing herein contained shall extend to repeal or alter any of the said stamp duties now payable in relation to any deed or instrument which shall have been signed or executed by any party thereto, or which shall bear date before or upon the tenth day of October, one thousand eight hundred and fifty-three.

The new duties to be denominated stamp duties, and to be under the care of the Commissioners of Inland Revenue.

Powers and provisions of former Acts to be in force.

Sect. 2.—The said duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all the powers, provisions, clauses, regulations, directions, allowances, and exemptions, fines, forfeitures, pains, and penalties contained in or imposed by any Act or Acts, or any schedule thereto relating to any duties of the same kind or description heretofore payable in Great Britain and Ireland respectively, and in force at the time of the passing of this Act, shall respectively be in full force and effect with respect to the duties by this Act granted, and to the vellum, parchment, and paper, instruments, matters, and things charged and chargeable therewith, and to the persons liable to the payment of the said duties, so far as the same are or shall be applicable in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise in relation thereto, so far as the same shall not be superseded by, and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same had been herein repeated

and specially enacted, *mutatis mutandis*, with reference to the said duties by this Act granted.

Stamps denoting the duty of one penny on receipts and drafts may be impressed or affixed.

Sect. 3.—The duties of one penny by this Act granted on receipts and on drafts or orders for the payment of money respectively may be denoted either by a stamp impressed upon the paper whereon any such instrument is written or by an adhesive stamp affixed thereto, and the Commissioners of Inland Revenue shall provide stamps of both descriptions for the purpose of denoting the said duties.

Where adhesive stamps are used to denote the duties on receipts, drafts or orders, the stamp to be cancelled by writing the name on it.

Sect. 4.—In any case where an adhesive stamp shall be used for the purpose aforesaid on any receipt or upon any draft or order respectively chargeable with the duty of one penny by this Act, the person by whom such receipt shall be given or such draft or order signed or made shall, before the instrument shall be delivered out of his hands, custody, or power, cancel or obliterate the stamp so used, by writing thereon his name or the initial letters of his name so and in such a manner as to show clearly and distinctly that such stamp has been made use of, and so that the same may not be again used; and if any person who shall write or give any such receipt or discharge or make or sign any such draft or order with any adhesive stamp thereon, shall not *bonâ fide* in manner aforesaid effectually cancel or obliterate such stamp, he shall forfeit the sum of ten pounds.

Penalty for committing frauds in the use of adhesive stamps.

Sect. 5.—If any person shall fraudulently get off or remove, or cause or procure to be gotten off or removed, from any paper whereon any receipt or any draft or order shall be written, any adhesive stamp, or if any person shall affix or use any such stamp which shall have been gotten off or removed from any paper whereon any receipt or any draft or order shall have been written, to or for any receipt, draft, or order, or any paper whereon any such receipt, draft, or order shall be or be intended to be written; or if any person shall do or practise or be concerned in any fraudulent act, contrivance, or device whatever, not specially provided for by this or some other Act of Parliament, with intent or design to defraud her Majesty, her heirs or successors, of any duty by this Act granted upon receipts or upon drafts or orders, every person so offending in any of the said several cases shall forfeit the sum of twenty pounds.

Sect. 6.—For better securing the stamp duties by law chargeable on policies of insurance upon lives, and for preventing frauds in respect of any such insurances:

In case of any insurance for lives, a stamp policy to be made out.

Every person who shall make or agree to make, or shall receive any premium or valuable consideration for making, any assurance or insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, shall, within one calendar month after the payment or giving of any such premium or consideration, make out and sign or execute, or cause and procure to be made out and signed or executed upon vellum, parchment, or paper, duly stamped, a policy of such assurance or insurance, and have the same ready to be delivered to the party entitled thereto, and shall upon demand made by any such party, or any agent in that behalf duly authorized, deliver the same to him, or in default in any of the cases aforesaid, shall forfeit the sum of fifty pounds:

Officers of insurance companies to be answerable for default.

Every person who at the time of the payment or giving of any such premium or consideration shall be a managing director of or the secretary to or other principal officer of any society or company receiving any such premium or consideration, shall be deemed to be a person making or agreeing to make such assurance or insurance, and shall be subject and liable to the penalty by this Act imposed for any such default as aforesaid.

Articles of clerkship to attorneys of the County Palatine Courts may be

Sect. 7.—Whereas by an Act passed in the fifty-fifth year of the reign of king George the third, chapter one hundred and eighty-four, certain stamp duties are imposed on any articles of clerkship or contract whereby any person shall first become bound to serve as a clerk in order to his admission as an attorney or solicitor in any court; that is to say, in order to admission in any

stamped for admission of the clerk into superior courts on payment of the additional duty only.

of the courts at Westminster, the stamp duty of one hundred and twenty pounds, and in order to admission in any of the Courts of the Counties Palatine, the stamp duty of sixty pounds: And whereas where any person has become bound and has served as a clerk under any such articles or contract stamped with the said duty of sixty pounds in order to his admission as an attorney or solicitor in any of the Courts of the Counties Palatine, he is capable of being admitted in any of her Majesty's courts at Westminster, but only upon the payment of the further stamp duty of one hundred and twenty pounds; and it is expedient to afford relief in such cases:

Where any person shall have become bound as a clerk in order to his admission as an attorney or solicitor in any of the Courts of the Counties Palatine by articles or contract stamped with the said duty of sixty pounds, then upon payment of such further sum of money as with the said duty of sixty pounds will make up the full stamp duty which, at the date of such articles or contract, was payable by law on articles of clerkship in order to admission in any of the courts at Westminster, it shall be lawful for the Commissioners of Inland Revenue and they are hereby required to stamp the said articles or contract with a stamp or stamps to denote such further duty, and thereupon such articles or contract shall be as valid and effectual for entitling such person to admission in any of the courts at Westminster as if the same had been duly stamped with such full duty in the first instance.

Sect. 8.—And whereas by an Act passed in the forty-eighth year of the reign of king George the third, chapter one hundred and forty-nine, section thirty-eight, persons intromitting with or entering upon the possession or management of any personal or moveable estate or effects in Scotland of any person dying, are required to exhibit a full and true inventory, duly stamped, to be recorded as in the said Act is provided, of all the personal or moveable estate and effects of the deceased already recovered or known to be existing; and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory of the same is in like manner to be exhibited and recorded; and every such additional inventory is chargeable by law with the full *ad valorem* stamp duty payable in respect of the total amount or value of the estate and effects specified therein, and in any such former inventory; and thereupon the party exhibiting the same is entitled to receive back the amount of the stamp duty paid on such former inventory; and it is expedient to prevent the inconvenience attending the over-payment of the stamp duty in such cases by charging on any such additional inventory the deficient stamp duty only:

Additional inventories in Scotland to be chargeable with additional duty only.

Every such additional inventory to be made and recorded as aforesaid shall be chargeable only with such amount of stamp duty as, together with the stamp duty charged upon any former duly stamped inventory of the estate and effects of the same deceased person already exhibited and recorded, shall make up the full amount of stamp duty chargeable by law in respect of the total amount or value of all the estate and effects of the said deceased specified in the said additional and any such former inventory.

Licences to perform divine service in certain cases free from stamp duty.

Sect. 9.—No licence granted to any spiritual person to perform divine service in any building approved by the bishop in lieu of any church or chapel whilst the same is under repair or is rebuilding, or in any building so approved for the convenience of the inhabitants of a parish resident at a distance from the church or consecrated chapel, shall be chargeable with any stamp duty.

Sect. 10.—And whereas by the said Act passed in the fifty-fifth year of the reign of king George the third, it is provided that where any property is sold and conveyed subject to any debt or sum of money to be afterwards paid by the purchaser, the same shall be deemed to be purchase or consideration money in respect whereof the said *ad valorem* duty charged upon the sale and conveyance of property is to be paid: And whereas it has been held and determined that the said *ad valorem* duty is payable in respect of any such sum or debt only where the purchaser is personally liable or bound, or undertakes or agrees to

pay the same or to indemnify the vendor against the same; and it is expedient to alter and amend the law in this respect:

Where property is sold subject to any mortgage, the mortgage money to be deemed part of the purchase money.

Where any lands or other property shall be sold and conveyed subject to any mortgage, wadset, or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding the purchaser shall not be or become personally liable, or shall not undertake or agree to pay the same or to indemnify the vendor or any person against the same, any thing in any Act or otherwise to the contrary notwithstanding.

Sect. 11.—And whereas it has been adjudged and determined by law that upon the sale of property, where the consideration expressed in the conveyance is a rentcharge or an annuity made subject to redemption or repurchase, *ad valorem* stamp duty is chargeable under the Act passed in the session of Parliament held in the thirteenth and fourteenth years of her Majesty, chapter ninety-seven, only where such redemption or repurchase may be enforced at the option of the vendor, and it is expedient that such duty should be chargeable in all cases where such rentcharge or annuity is made redeemable:

13 & 14 Vict. c. 97.

Where property is sold in consideration of a redeemable annuity, the redemption money to be deemed purchase money.

In any case where property shall be sold and conveyed in consideration of any rentcharge or annuity, or any annual or periodical payment to be made permanently or for any indefinite period, so that the total amount of the money to be paid for such property cannot be previously ascertained, which rentcharge, annuity, or other payment shall be made subject to redemption or purchase upon terms and conditions specified in the deed or instrument whereby the property sold shall be conveyed to or vested in the purchaser, or any person by his direction, the money or the consideration mentioned in the said deed or instrument as that on payment or transfer, delivery or satisfaction, of which the said rentcharge, annuity, or other payment shall be redeemed or purchased or repurchased, or shall cease to be payable, shall be deemed to be the purchase money or consideration on the sale of the said property so sold and conveyed, and in respect of which last-mentioned purchase money or consideration the *ad valorem* duty shall be chargeable; and where any such last-mentioned consideration shall consist wholly or in part of any stock or security mentioned in the said Act, the value thereof shall be ascertained as in such Act is in that behalf provided; and where any such annuity, rentcharge, or other payment aforesaid shall be made subject to redemption or purchase or repurchase or discontinuance upon payment or satisfaction of any money or value to be ascertained or calculated in manner provided in the said deed or instrument, the amount of such money or value shall, for the purpose of charging the said *ad valorem* duty, be ascertained or calculated as in such deed or instrument shall be so provided.

Sect. 12.—And whereas by the said Act of the thirteenth and fourteenth years of her Majesty, chapter ninety-seven, a stamp duty of five shillings was granted and imposed upon the duplicate or counterpart of any deed or instrument chargeable with stamp duty (exclusive of progressive duty) to the amount of five shillings or upwards; and it is provided that in such case the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument; and it is expedient to dispense with the said particular stamp on counterparts of leases:

Counterparts of leases not required to be impressed with the denoting stamp.

Notwithstanding any thing contained in the said Act, the counterpart of any lease of lands, tenements, or hereditaments, being duly stamped with the said stamp duty of five shillings, or any higher stamp duty (exclusive of progressive duty), and not being executed or signed by or on the behalf of any lessor or grantor, shall be available as a counterpart without being stamped with a particular stamp for denoting or testifying the payment of the stamp duty chargeable on the original lease.

Sect. 13.—And whereas by the said Act of the thirteenth and fourteenth years of her Majesty, when any deed or instrument shall be presented to the

Commissioners of Inland Revenue, and the fee of ten shillings shall be paid to them for their opinion as to the stamp duty with which such deed or instrument in their judgment is chargeable, the said commissioners are required to assess and charge the stamp duty on such deed or instrument, and, on the same being duly stamped, to impress thereon a particular stamp to signify and denote that the full amount of stamp duty with which such deed or instrument is by law chargeable has been paid: And whereas the said commissioners are not authorized to impress a particular stamp upon any deed or instrument not chargeable with any stamp duty in order to denote that the same is not so chargeable; and it is expedient that provision shall be made for that purpose:

Commissioners may adjudge deeds not liable to stamp duty.

It shall be lawful for any person to present to the said commissioners any deed or instrument, and upon payment of the fee of ten shillings, as in the said Act is mentioned, to require their opinion whether or not the same is chargeable with any stamp duty, and if the said commissioners shall be of opinion that such deed or instrument is not chargeable with any stamp duty, it shall be lawful for them and they are hereby required to impress thereon a particular stamp, to be provided by them for that purpose, with such word or words, or device or symbol thereon as they shall think proper in that behalf, which shall signify and denote that such deed is not chargeable with any stamp duty; and every such deed or instrument upon which the said stamp shall be impressed shall be deemed to be not so chargeable, and shall be receivable in evidence in all courts of law and equity, notwithstanding any objection made to the same as being chargeable with stamp duty, and not stamped to denote the same:

Appeal from the determination of the commissioners.

Provided always, that if the said commissioners shall assess and charge any stamp duty upon or in respect of any such deed or instrument, and the party presenting the same and paying such duty shall declare himself dissatisfied with their determination, it shall be lawful for him to appeal against the same to her Majesty's Court of Exchequer, on the terms and in the manner in the said Act provided; and the said court shall hear and determine the appeal, and decide whether the said deed or instrument is chargeable with any, and if any, what stamp duty; and if the court shall be of opinion that the same is not so chargeable, or is chargeable with a less amount of duty than shall have been assessed and charged thereon, then the amount of such duty or of the excess (as the case may be) shall be returned to the appellant, together with the sum deposited as in the said Act mentioned; and if the court shall be of opinion that any further duty is chargeable on the said deed or instrument, such further duty shall be paid to the said commissioners, and the court shall order and enforce the payment thereof accordingly.

Sect. 14.—And whereas it would facilitate the transfer of the bonds and mortgages given by public companies under the provisions of Acts of Parliament as securities for money which such companies are by the said Acts expressly empowered or authorized to borrow, if the transfers or assignments of such bonds or mortgages were endorsed thereon, and were exempted from stamp duty, and it is expedient to grant such exemption in consideration of a composition stamp duty being paid on such bonds and mortgages on the original making and issuing thereof, in lieu of the stamp duty with which such transfers or assignments would otherwise be chargeable:

Transfers of bonds and mortgages of public companies exempted from stamp duty on payment of a composition.

Where on the original making and issuing of any such bond or mortgage as aforesaid, and before any transfer or assignment thereof, the same shall be stamped with an amount of stamp duty equal to three times the amount of the *ad valorem* stamp duty chargeable thereon by law, and over and above the said *ad valorem* duty, then every transfer or assignment thereafter made of such bond or mortgage by endorsement thereon shall be deemed to be exempt from the stamp duty which would otherwise be payable in respect of such transfer or assignment: Provided always, that nothing herein contained shall extend to exempt any such transfer or assignment from any stamp duty to which it may be liable as a settlement of the money or stock secured by such bond or mortgage, or any portion thereof.

Sect. 15.—And whereas it is desirable to facilitate the purchase of stamped paper, covers, or envelopes, and of other stamps for expressing or denoting the rates or duties of postage (all of which are hereinafter designated as postage stamps), and for that purpose to enable certain persons in the service of the post office to sell postage stamps without having any such licence as the laws now in force require in that behalf, and without being subject or liable to any penalty for carrying about postage stamps for sale:

Persons authorized by postmaster-general may sell postage stamps, or carry same about for sale, subject to penalty.

It shall be lawful for the postmaster-general by writing under his hand to authorize and appoint any person in the service or employment of the post office to sell postage stamps at any particular house or place to be specified for that purpose, and also any messenger or other person employed in the delivery of letters sent by post to carry about for sale and to sell at any place postage stamps, and all such persons shall, during the period that such authority and appointment shall remain in force and unrevoked, without any licence or any authority other than last aforesaid, be at liberty to sell at any house or place to be specified as aforesaid, or if so authorized, to carry about for sale and sell at any place, any postage stamps, and such persons respectively shall not be subject or liable to any penalty or forfeiture for so doing, any thing in any Act or Acts to the contrary notwithstanding.

For preventing the evasion of the duties on playing cards.

Sect. 16.—And whereas by an Act passed in the ninth year of the reign of king George the fourth, chapter eighteen, granting stamp duties upon playing cards made fit for sale or use in the United Kingdom, such duties to be denoted on the ace of spades of each pack of cards, it is enacted, that no playing cards shall be sold as waste cards unless a corner of each card shall be cut off at least half an inch in depth, and other provisions are therein contained for securing the said duties: And whereas packs or parcels of cards fit and intended for use and play, but not containing an ace of spades duly stamped, are commonly sold under the pretence of being waste cards, each of such cards having a corner cut off, whereby the said duties are evaded; and it is expedient to prevent such practice:

No playing cards, except such as shall be *bonâ fide* spoiled and rendered unfit for use as playing cards in the process of manufacture, and which shall have a corner cut off as in the said last-mentioned Act is provided, nor any cards commonly called or known as picture cards or court cards, shall be deemed to be waste cards; and no playing cards except waste cards shall be sold otherwise than in packs, each pack containing fifty-two cards of the four usual suits of thirteen cards each, including an ace of spades duly stamped for denoting the duty by the said Act granted on a pack of cards, and tied up together in manner directed by the said Act; and if any person shall sell or expose or keep for sale any playing cards, not being a pack of cards as aforesaid, and the same not being *bonâ fide* waste cards within the meaning of this Act, he shall for every pack, parcel, or separate quantity of cards so sold or exposed or kept for sale forfeit, if he shall not be a licensed maker of playing cards, the sum of ten pounds, and if he shall be such licensed maker the sum of twenty pounds; and all cards so sold or exposed or kept for sale shall be forfeited, and may be seized and taken by any Officer of Inland Revenue, and be disposed of as the Commissioners of Inland Revenue shall direct; provided that if in any proceeding any question shall arise whether any cards are or were *bonâ fide* waste cards or not, proof of the affirmative thereof shall lie on the party selling the same or having or keeping the same for sale.

Exemption of excise officers

Sect. 17.—And whereas by an Act passed in the session held in the seventh and eighth years of the reign of king George the fourth, chapter fifty-three, officers of excise and persons employed in the collection or management of or accounting for the revenue of excise are exempted from serving as mayor or sheriff, or in any corporate or parochial or other public office or employment, or on any jury or inquest, or in the militia; and it is expedient to extend the same or all other officers appointed by or under the Commissioners of Inland Revenue:

No officer or person appointed by the Commissioners of Inland Revenue, to employed by them or under their authority or direction in any way relating to excise

from serving public offices extended to Officers of Inland Revenue.

any of the duties under their care or management shall, so long as he shall continue in and exercise such last-mentioned office or employment, be compelled to serve as mayor or sheriff, or in any of the offices, employments, or capacities in the said Act and hereinbefore in that behalf mentioned.

Allowance for receipt stamps on hand.

Sect. 18.—Where any person shall be possessed of any stamps rendered useless by this Act, it shall be lawful for the Commissioners of Inland Revenue, on application to them or to their proper officer in that behalf, at any time within six calendar months after the commencement of this Act to cancel and make allowance for the same, as in the case of spoiled stamps, after deducting the discount by law granted on the purchase of receipt stamps.

Drafts on bankers payable to order on demand sufficient authority for payment without proof of endorsement.

Sect. 19.—Provided always, That any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any endorser thereof.

Sect. 20.—And whereas by an Act passed in the session of Parliament held in the fifth and sixth years of her Majesty's reign, chapter eighty-two, certain rates and duties denominated stamp duties were granted and made payable in Ireland for a limited term; and by four several Acts passed respectively, in the eighth, eleventh, fourteenth, and fifteenth years of her Majesty's reign the same rates and duties were continued for four other several and successive terms, the last of which will expire on the tenth day of October, one thousand eight hundred and fifty-three; and it is expedient to make the said rates and duties perpetual:

Stamp duties in Ireland granted by 5 & 6 Vict. c. 82, and continued by 8 & 9 Vict. c. 2, 11 & 12 Vict. c. 9, 14 & 15 Vict. c. 18, 15 & 16 Vict. c. 21, made perpetual.

Acts continued in force.

All the several sums of money and duties and composition for duties granted and made payable in Ireland by the said Act of the fifth and sixth years of her Majesty, chapter eighty-two, and not repealed by any subsequent Act, and also all duties now payable in lieu or instead of any of the said duties which may have been so repealed, shall be and the same are hereby continued and made perpetual, and shall be charged, raised, levied, collected, and paid unto and for the use of her Majesty, her heirs and successors for ever: The said Act of the fifth and sixth years of her Majesty, and all and every other Act and Acts now in force in relation to the duties and composition for duties which are continued by this Act, shall severally be continued and remain in full force in all respects in relation to the said duties and composition for duties hereby continued and granted, and all and every the powers and authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things contained in the said Acts or any of them, and in force as aforesaid, shall severally and respectively be duly observed, practised, applied, and put in execution in relation to the said duties and composition for duties hereby continued and granted, for the charging, raising, levying, paying, accounting for, and securing of the said duties and composition for duties, and all arrears thereof, and for the preventing, detecting, and punishing of all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in the body of this Act with reference to the said duties and composition for duties hereby granted.

[For the duties granted by this Act, *vide* TABLE, titles, "APPRENTICESHIP," "DEBENTURE," "BILL OF EXCHANGE" (*Draft or Order*), "POLICY OF ASSURANCE" (*on Lives*), and "RECEIPT."]

16 & 17 VICT. c. 63.

An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, to give Relief with respect to the Stamp Duties on Newspapers and Supplements thereto, to repeal the Duty on Advertisements, and otherwise to amend the Laws relating to Stamp Duties. [4th August, 1853.]

Whereas it is expedient to repeal the stamp duties now payable in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and to impose other stamp duties in lieu thereof, and also to give relief with respect to the stamp duties on newspapers and supplements thereto, and otherwise to amend the laws relating to stamp duties, and to repeal the duty charged on advertisements: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Stamp duties on instruments in the schedule annexed repealed, and others granted in lieu thereof.

Sect. 1.—From and after the passing of this Act the several stamp duties now payable in Great Britain and Ireland respectively, under or by virtue of any Act or Acts of Parliament for or in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and whereon other duties are by this Act granted, shall respectively cease and determine, and shall be and the same are hereby repealed; and in lieu and instead thereof there shall be granted, raised, levied, collected, and paid in and throughout the United Kingdom of Great Britain and Ireland, to and to the use of her Majesty, her heirs and successors, for and in respect of the several instruments, matters, and things described or mentioned in the said schedule, or for or in respect of the vellum, parchment, or paper upon which any of them respectively shall be written, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the said schedule, which said schedule, and the several provisions, regulations, and directions therein contained with respect to the said duties, and the instruments, matters, and things charged therewith, shall be deemed and taken to be part of this Act, and shall be applied, observed, and put in execution accordingly: Provided always, that nothing herein contained shall extend to repeal or alter any of the said stamp duties now payable in relation to any deed or instrument which shall have been signed or executed by any party thereto, or which shall bear date before or upon the passing of this Act.

The new duties to be denominated stamp duties, and to be under the care of the Commissioners of Inland Re-

Sect. 2.—The said duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all the powers, provisions, clauses, regulations, directions, allowances, and exemptions, fines, forfeitures, pains, and penalties contained in or imposed by any Act or Acts, or any schedule thereto, relating to any duties of the same kind or description heretofore payable in Great Britain and Ireland respectively, and in force at the time of the passing of this Act, shall respectively be in full force and effect with

Powers and provisions of former Acts to be in force.

respect to the duties by this Act granted, and to the vellum, parchment, and paper, instruments, matters, and things charged and chargeable therewith, and to the persons liable to the payment of the said duties, so far as the same are or shall be applicable in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise in relation thereto, so far as the same shall not be superseded by, and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the said duties by this Act granted.

As to duties on newspapers and supplements.

Sect. 3.—No higher stamp duty than one penny shall be chargeable on any newspaper printed on one sheet of paper containing a superficies not exceeding two thousand two hundred and ninety-five inches:

A supplement published with any newspaper duly stamped with the duty of one penny, such supplement being printed on one sheet of paper only, and together with such newspaper containing in the aggregate a superficies not exceeding two thousand two hundred and ninety-five inches, shall be free from stamp duty:

Any other supplement to any such duly stamped newspaper shall not be chargeable with any higher stamp duty than one halfpenny, provided it does not contain a superficies exceeding one thousand one hundred and forty-eight inches:

And any two supplements to any such duly stamped newspaper shall not be chargeable with any higher stamp duty than one halfpenny on each, provided each of such supplements be printed and published on one sheet of paper only, and that they contain together a superficies not exceeding in the aggregate two thousand two hundred and ninety-five inches:

The superficies in all the cases aforesaid to be one side only of the sheet of paper, and exclusive of the margin of the letter press.

Allowance for newspaper stamps on hand.

Sect. 4.—Where any person shall be possessed of any stamps for newspapers rendered useless by this Act, it shall be lawful for the Commissioners of Inland Revenue, on application to them or to their proper officer in that behalf, at any time within six calendar months after the commencement of this Act, to cancel and make allowance for the same, as in the case of spoiled stamps.

After passing of this Act all duties on advertisements to cease.

Sect. 5.—And whereas it is expedient to repeal the duties now payable on advertisements: From and after the passing of this Act the duties now payable under any Act or Acts in force for or in respect of any advertisement contained in or published with any gazette or other newspaper, or contained in or published with any other periodical paper, or in or with any pamphlet or literary work, and all enactments, clauses, provisions, and regulations for levying, collecting, and securing the said duties, but so far only as they relate to such duties, shall respectively cease and determine, and shall be and the same are hereby repealed, save and except as to any of the said duties which shall have been charged or incurred on or before the day of the passing of this Act, and any arrear thereof, and as to all fines and penalties incurred or which may be incurred in respect of the said duties or arrears, all which said duties and arrears, fines and penalties, so excepted as aforesaid, shall respectively be sued for, recovered, levied, paid, and applied in the same manner as if this Act had not been passed.

Duties on assignments of judgment in

Sect. 6.—Whereas it is expedient to remove doubts which have arisen as to the stamp duties chargeable upon assignments of judgment in Ireland; and it is also expedient to reduce the stamp duties now chargeable in Scotland upon

writs of acknowledgment by persons infeft of lands in favour of the heirs or disponees of creditors: In lieu of the stamp duties now payable upon the instruments hereinafter mentioned there shall be chargeable (besides any progressive duties to which the same respectively may be liable by reference to the head of progressive duty in the schedule to the Act of the thirteenth and fourteenth years of her present Majesty, chapter ninety-seven) the respective stamp duties following: [*Vide* THE TABLE, titles, "ASSIGNMENT OF JUDGMENT" and "WRIT OF ACKNOWLEDGMENT."]

Ireland, an writs of acknowledgmen in Scotland.

Sect. 7.—And whereas under and by virtue of certain Acts of Parliament now in force the governor and company of the Bank of Scotland, and the Royal Bank of Scotland, and the British Linen Company in Scotland, are respectively authorized and empowered to make and issue and re-issue their promissory notes payable to bearer on demand on unstamped paper, giving security, and keeping and producing true accounts of all the notes so issued by them respectively, and accounting for and paying the stamp duties payable in respect of such notes: and whereas it is expedient to authorize and empower the commissioners of her Majesty's treasury to compound with the said banks, as well as all bankers in Scotland, for the stamp duties on their promissory notes payable to bearer on demand, as well as for stamps payable on their bills of exchange: It shall be lawful for the commissioners of her Majesty's treasury for the time being, or any three of them, and they are hereby authorized and empowered to compound and agree with the said governor and company of the Bank of Scotland, and the Royal Bank of Scotland, and the British Linen Company in Scotland, and all or any other bankers in Scotland, or elsewhere, respectively, for a composition in lieu of the stamp duties payable on the promissory notes of the said banks and bankers respectively payable to the bearer on demand, as well as for stamps payable on their bills of exchange; and such composition shall be made on such terms and conditions, and with such security for the payment of the same, and for keeping, producing, and rendering of such accounts, as the said last-mentioned commissioners may deem to be proper in that behalf; and upon such composition being entered into by such banks and bankers respectively it shall be lawful for them to issue and re-issue all notes and to draw all such bills for which such composition shall have been made on unstamped paper, any thing in any Act contained to the contrary notwithstanding.

Power to treasury to compound with bankers in Scotland for the stamp duties on their promissory notes.

Sect. 8.—[For the duties granted by this clause on scrip certificates, *vide* TABLE, title, "CERTIFICATES."]

Stamp duty on scrip certificates.

Sect. 9.—No receipt given for any sum or sums of money received for or on account of land tax, or the duties of assessed taxes, or the duties on profits arising from property, professions, trades, and offices, by any collector or receiver of such taxes or duties, or by any person having authority to collect or receive the same, shall be subject or liable to any stamp duty.

Receipts for land or assessed taxes or income tax exempt from stamp duty.

Sect. 10.—The duties granted by an Act of the present session of Parliament on policies of assurance may be denoted either by a stamp impressed upon the paper whereon any such instrument is written, or by an adhesive stamp affixed thereto, and the Commissioners of Inland Revenue shall provide stamps of both descriptions for the purpose of denoting the said duties.

Stamps denoting the duty on policies of life assurance may be impressed or affixed.

Sect. 11.—The adhesive stamps to be so provided for the purpose aforesaid shall be adapted for the writing of the following particulars thereon; (that is to say,) the date and number of the policy, and the names of the person insured and of one of the directors of the assurance company, or other person by whom the same shall be signed; and where an adhesive stamp shall be used or intended to be used for or upon any such policy, such stamp shall be firmly and securely

Certain particulars to be written on adhesive stamps for policies.

affixed and made to adhere to such policy, and all the several particulars aforesaid shall be fairly and distinctly written upon such stamp at or before the time of the signing thereof by such director or other person aforesaid, or in default thereof such director or other person signing such policy shall forfeit the sum of fifty pounds

[For the duties contained in the schedule to this Act, *vide* TABLE, titles, "ARTICLES OF CLERKSHIP," "CERTIFICATE," and "CONVEYANCE," in consideration of any annuity or rentcharge]

Succession Duties.

16 & 17 VICT. c. 51.

An Act for granting to her Majesty Duties on Succession to Property, and for altering certain Provisions of the Acts charging Duties on Legacies and Shares of Personal Estates.

[4th August, 1853.]

Most gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary Supplies for defraying your Majesty's Public Expenses, and making a permanent Addition to the Public Revenue, have freely and voluntarily resolved to grant unto your Majesty the duties hereinafter mentioned; and do most humbly beseech your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpretation of certain terms in this Act.

Sect. 1.—In the construction and for the purposes of this Act,

The term "real property" shall include all freehold, copyhold, customary, leasehold, and other hereditaments, and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments:

The term "personal property" shall not include leaseholds, but shall include money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of real property:

The term "property" alone shall include real property and personal property:

The term "succession" shall denote any property chargeable with duty under this Act:

The term "trustee" shall include an executor and administrator, and any person having or taking on himself the administration of property affected by any express or implied trust:

The term "person" shall include a body corporate, company, and society:

The term "Legacy Duty Acts" shall denote the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons.

What dispositions and devolutions of property shall confer successions.

Sect. 2.—Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession;" and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

Definition of the terms "successor," "predecessor."

Joint tenants taking by survivorship to be deemed successors.

Sect. 3.—Where any persons shall, at or after the time appointed for the commencement of this Act, have any property vested in them jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this Act in proportion to their respective interests in the succession; and any beneficial interest in such succession, accruing to any of them by survivorship, shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived.

General powers of appointment to confer successions.

Sect. 4.—Where any person shall have a general power of appointment, under any disposition of property taking effect upon the death of any person dying after the time appointed for the commencement of this Act, over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed, as a succession derived from the donor of the power; and where any person shall have a limited power of appointment, under a disposition taking effect, upon any such death, over property, any person taking any property by the exercise of such power shall be deemed to take the same as a succession derived from the person creating the power as predecessor.

Extinction of determinable charges to confer successions.

Sect. 5.—Where any property shall at or after the time appointed for the commencement of this Act be subject to any charge, estate, or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or persons upon the extinction or determination of such charge, estate, or interest, shall be deemed to be a succession accruing to the person, or the persons if more than one, then entitled beneficially to the property or the income thereof, according to his or their respective estates or interests therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged shall be deemed to be the predecessor or predecessors, as the case may be.

Persons now beneficially entitled to real property subject to leases for life, not liable to duty.

Sect. 6.—Provided that no person entitled, at the time appointed for the commencement of this act, to the immediate reversion in any real property expectant upon the determination of any lease for life or for years determinable on life, shall be chargeable with duty in respect of such determination, in the event of the same occurring in his lifetime.

Dispositions accompanied by the reservation of a benefit to the grantor, &c., to confer successions.

Sect. 7.—Where any disposition of property, not being a *bonâ fide* sale, and not conferring an interest expectant on death on the person in whose favour the same shall be made, shall be accompanied by the reservation or assurance of or contract for any benefit to the grantor, or any other person, for any term of life or for any period ascertainable only by reference to death, such disposition shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for, on the person in whose favour such disposition shall be made.

Dispositions to take effect at periods depending on death, or made for evading duty, to confer successions.

Sect. 8.—Where any disposition of property shall be made to take effect at a period ascertainable only by reference to the date of the death of any person dying after the time appointed for the commencement of this Act, such disposition shall be deemed to confer a succession on the person in whose favour the same shall be made; and where any disposition of property shall purport to take effect presently, or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust, or arrangement capable of being enforced in a court of law or equity, the beneficial ownership

of such property shall not *bonâ fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as the predecessor; and where any court of competent jurisdiction shall declare any disposition to have been fraudulent and made for the purpose of evading the duty imposed by this Act, it shall be lawful for such court to declare a succession to have been conferred on such person at such time and to such an extent as such court shall think just; and such last-mentioned person shall be deemed to have taken a succession accordingly derived from the person making such disposition as predecessor.

Duties to be under the care and management of the Commissioners of Inland Revenue.

Sect. 9.—The duties hereinafter imposed shall be considered as stamp duties and shall be under the care and management of the Commissioners of Inland Revenue, hereinafter called "The Commissioners;" who, by themselves and their officers, shall have the same powers and authorities for the collection, recovery, and management thereof, as are by an Act passed in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter one, or by any other Act or Acts, vested in them for the collection, recovery, and management of any stamp duties; and shall provide proper stamps for denoting the rate *per centum* of the duties payable under this Act; and shall have all other powers and authorities requisite for carrying this Act into execution.

Duties on successions.

Sect. 10.—There shall be levied and paid to her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties; (that is to say,)

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value:

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value:

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value:

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value:

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value.

Provision as to married persons chargeable with succession or legacy duties.

Sect. 11.—Where any person chargeable with duty under this Act in respect of any succession, or chargeable with duty under the Legacy Duty Acts in respect of any legacy bequeathed to him or her by a testator dying after the time appointed for the commencement of this Act, or in respect of the personal estate of any person dying after the same period, shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator, or deceased person, then the person taking such succession, legacy, or personal estate shall pay in respect thereof the same rate of duty only as such his or her wife or husband would have been chargeable with if she or he had taken the same.

What duties payable when the successor is also the predecessor.

Sect. 12.—Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the time appointed for the commencement of this Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession, at the same rate as he would have been chargeable with if no such disposition had been made; but a successor

shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of any charge, estate, or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto expectantly on the death of some person dying after the time appointed for the commencement of this Act.

Provision as to joint predecessors.

Sect. 13.—Where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

Duty on transmitted successions.

Sect. 14.—Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

Duties payable in respect of transferred interests.

Sect. 15.—Where, at the time appointed for the commencement of this Act, any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time and at the same rate as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where after the time appointed for the commencement of this Act, any succession shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created; and where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place.

Succession subject to trusts for charitable or public purposes chargeable with duty.

Sect. 16.—Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds *per centum* upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised.

Provision for life policies and certain *post obit* bonds.

Sect. 17.—No policy of insurance on the life of any person shall create the relation of predecessor and successor between the insurers and the assured, or between the insurers and any assignee of the assured, and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made; but any disposition or devolution of the monies payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession.

Exemptions.

Sect. 18.—Where the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons shall not amount in money or principal value to the sum of one hundred pounds, no duty

shall be payable under this Act in respect thereof or of any portion thereof; and no duty shall be payable under this Act upon any succession, which, as estimated according to the provisions of this Act, shall be of less value than twenty pounds in the whole, or upon any monies applied to the payment of the duty on any succession according to any trust for that purpose, or by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts; and no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act; and no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property.

Leasehold estates not to be charged with legacy duty as personal estate.

Sect. 19.—No legatee or other person shall, after the time appointed for the commencement of this Act, be chargeable under the Legacy Duty Acts with duty, not then already due, in respect of any leasehold hereditaments of any testator or deceased person, as belonging to the personal estate of the testator or deceased.

Duties to be paid on the successor becoming entitled in possession; but in the case of outstanding interests, on the determination thereof.

Sect. 20.—The duty imposed by this Act shall be paid at the time when the successor, or any person in his right or on his behalf, shall become entitled in possession to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate, or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon the determination of such charge, estate, or interest, shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination; and except that in case of an annuity, or property hereby made chargeable as an annuity, the duties shall be paid by such instalments as are hereinafter directed or referred to; provided that no duty shall be payable upon the determination of any lease purporting at the date thereof to be a lease at rackrent, in respect of the increase accruing to the successor upon such determination.

The interest of a successor in real property to be considered as an annuity.

Sect. 21.—The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property, after making such allowances as are hereinafter directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less period during which he shall be entitled thereto; and every such annuity, for the purposes of this Act, shall be valued according to the tables in the schedule annexed to this Act; and the duty chargeable thereon shall be paid by eight equal half-yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the seven following instalments at half-yearly intervals of six months each, to be computed from the day on which the first instalment shall have become due, provided that if the successor shall die before all such instalments shall have become due, then any instalments not due at his decease shall cease to be payable, except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

Rules for valuing lands, houses, &c.

Sect. 22.—In estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rentcharges, and other property yielding or capable of yielding income not of a fluctuating character, an allowance shall be made of all necessary outgoings.

Rule as to timber.

Sect. 23 —Where timber, trees, or wood, not being coppice or underwood, shall

be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net monies, after deducting all necessary outgoings for the year, which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for and pay the same yearly; provided that no duty shall be payable on the net monies received from the sale of timber, trees, or wood in any one year, unless such net monies shall exceed the sum of ten pounds; provided, that if the successor shall be desirous of commuting the duty, and shall deliver to the commissioners an estimate of the net monies obtainable by him from the sale of such timber, trees, and wood as may, in a prudent course of management of the property, be felled by such successor during his life, the commissioners, if satisfied with such estimate, shall accept the same and assess the duty accordingly.

Rule as to advowsons.

Sect. 24.—A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same, or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth, for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal.

Rule as to property subject to beneficial leases.

Sect. 25.—Where a successor, entitled to any real property, subject to any lease by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or grassum or other consideration which may be received during his life for the renewal of any such lease, or the grant of any reversionary lease of the same property.

Rule as to manors, mines, &c.

Sect. 26.—The yearly value of any manor, opened mine, or other real property of a fluctuating yearly income shall either be calculated upon the average profits or income derived therefrom, after deducting all necessary outgoings, during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor, before the first payment of duty on the succession shall have become due, or, if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest calculated at the rate of three pounds *per centum per annum* on the amount of such principal value.

Duty payable by corporations, &c., taking real estates.

Sect. 27.—Where any body corporate, company, or society shall become entitled, as successors, to any real property, the duty in respect thereof shall be assessed upon the principal value of such property, but shall be payable by such instalments, at such times, and in such manner as the same would be payable if assessed in respect of property devolving on a successor in fee-simple; and it shall be lawful for such body corporate, company, or society, or any trustee thereof, to raise the amount of any duty due in respect of their succession upon the security thereof, at interest, with power for them to give effectual discharges for the money so raised.

Allowance for fines, &c., paid by successor.

Sect. 28.—If a successor, or any person on his behalf, upon becoming entitled to any copyhold or other real property, shall be subject to any fines, casualties of superiority, compositions, reliefs, or charges incident to the tenure thereof, and due in respect of his succession, he shall be entitled to have a deduction allowed to him of the amount of such fines, casualties, compositions, reliefs, or charges from the assessable value of his interest in such copyhold or other real property.

Real property directed to be sold to be charged as personalty.

Sect. 29.—The interest of any successor in monies to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such monies shall be subject to any trust for the re-investment thereof in the purchase of other real property, to which the successor would not be absolutely entitled, such monies shall be deemed to be real property, and for the purpose

of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or direction for sale, or any property purchased in substitution for it, or any intermediate investment of the produce of the sale of the original property.

Personal property to be invested in real property, how to be charged.

Sect. 30.—The interest of any successor in personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase

Annuities under this Act and the Legacy Duty Acts to be valued according to the tables annexed to this Act.

Sect. 31.—Where it shall be required to calculate, for the purposes either of this Act or of the Legacy Duty Acts, the value of any annuity, or of any interest chargeable with duty as an annuity, such value shall, after the time appointed for the commencement of this Act, be calculated according to the tables in the schedule annexed to this Act, and not according to the tables in the schedule annexed to the Act of the thirty-sixth year of the reign of king George the third, chapter fifty-two, and such annuity or interest shall be chargeable with duty accordingly.

Provisions as to the assessment of personalty.

Sect. 32.—The following provisions relating to the assessment and payment of duty on personal estate, and the exemption thereof from duty in certain cases, namely, the eighth, tenth, eleventh, twelfth, fourteenth, and twenty-third sections of the said Act of the thirty-sixth year of the reign of king George the third, chapter fifty-two, shall be applicable to the personal property comprised in any succession, and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions, and as if the tables in the said Act referred to were the tables in the schedules annexed to this Act.

Allowance to donee of general power of appointment.

Sect. 33.—Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

What allowance to be made for incumbrances.

Sect. 34.—In estimating the value of a succession no allowance shall be made in respect of any incumbrance thereon created or incurred by the successor, not made in execution of a prior special power of appointment, but an allowance shall be made in respect of all other incumbrances, and also in respect of any monies which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his succession; provided that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto* of such real property.

No allowance to be made in respect of con-

Sect. 35.—In estimating the value of a succession no allowance shall be made in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the suc-

tingent incumbrances, unless they take effect.

cessor, he shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect.

The duty on successions to be calculated without regard to contingencies.

Sect. 36.—In estimating the value of a succession no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

Provision for allowance or return of duty.

Sect. 37.—Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the commissioners that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the commissioners shall thereupon refund the same to the person entitled thereto.

Allowance to be made to successor in respect of relinquished property.

Sect. 38.—Where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property.

Power for commissioners to compound duties.

Sect. 39.—Where, in the opinion of the commissioners, any succession shall be of such a nature, or so disposed or circumstanced, that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where, from the complication of circumstances affecting the value of a succession, or affecting the assessment or recovery of the duty thereon, the commissioners shall think it expedient to exercise this present authority, it shall be lawful for them to compound the duty payable on the succession upon such terms as they shall think fit, and to give discharges to the successor, upon payment of duty according to such composition; and it shall be lawful for them, in any special cases in which they may think it expedient so to do, to enlarge the time for payment of any duty.

Power of commissioners to receive duty in advance.

Sect. 40.—It shall be lawful for the commissioners to receive any duty tendered to them in advance, and to allow discount thereon at the rate of four pounds *per centum per annum*, or at such other rate as may from time to time be directed by the commissioners of her Majesty's treasury; and no person, by reason of his having made any payment of duty in advance, shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act.

Power for commissioners to commute future duties.

Sect. 41.—It shall be lawful for the commissioners, in their discretion, upon application made by any person who shall be entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid, and for assessing the amount which shall be so payable they shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance; and upon the receipt of such certain sum they shall give discharges to the successor accordingly.

Duty to be a first charge on property.

Sect. 42.—The duty imposed by this Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed, while the same shall remain in the

ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor; and the said duty shall be a debt due to the crown from the successor, having, in the case of real property comprised in any succession, priority over all charges and interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession; provided that, where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exercisable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all monies arising from the exercise of any such power, and in all investments of such monies.

Provision for the separate assessments of properties.

Sect. 43.—The commissioners shall, at the request of any successor, or any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor in any separate properties, or in defined portions of the same property, as shall be reasonably required; and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof; and it shall be lawful also for the commissioners, by their certificates, to be issued in such form as they shall think fit, from time to time to declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged, as to any unpaid instalments, according to any further distribution thereof, upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be thenceforth limited according to such further distribution.

What persons accountable for duty.

Sect. 44.—The following persons, besides the successor, shall be personally accountable to her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act; that is to say, every trustee, guardian, committee, tutor or curator, or husband in whom respectively any property, or the management of any property, subject to such duty, shall be vested, and every person in whom the same shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession; and all such trustees, guardians, committees, tutors, curators, husbands, and persons shall be authorized to compound or pay in advance or commute any duty, and retain out of the property, subject to any such duty, the amount thereof, or to raise such amount, and the expenses incident thereto, at interest on the security of such property, with power to give effectual discharges for the same, and such security shall have priority over any charge or incumbrance created by the successor; and in the event of the non-payment of such duty as aforesaid every person hereby made accountable shall be a debtor to her Majesty in the amount of the unpaid duty for which he shall be so accountable.

Notice of succession to be given to the commissioners, and a return of the property made.

Sect. 45. The persons hereby made accountable for the payment of duty in respect of any succession, or some of them, shall, in the case of personal property, at the time of the first payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or for the successor or any person in his right, and in the case of real property when any duty in respect thereof shall first become payable, give notice to the commissioners or to their officers of their liability to such duty, and shall at the same time deliver to the commissioners or to their officers a full and true account of the property for the duty whereon they shall respectively be accountable, and of the value thereof, and of the deductions claimed by them, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as

shall be necessary or proper for enabling the commissioners fully and correctly to ascertain the duties due; and the commissioners, if satisfied with such account and estimate as originally delivered, or with any amendments that may be made therein upon their requisition, may assess the succession duty on the footing of such account and estimate; but it shall be lawful for the commissioners, if dissatisfied with such account and estimate, to cause an account and estimate to be taken by any person or persons to be appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal, as hereinafter provided; and if the duty so assessed shall exceed the duty assessable according to the return made to the commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate on the interest of the successor in respect whereof the duty shall be due, in increase of such duty, and to recover the same forthwith accordingly; and if there shall be an appeal against such last mentioned assessment, then the payment of such expenses shall be in the discretion of the court of appeal hereinafter appointed.

Penalty on not giving notices of succession.

Sect. 46.—If any person required to give any such notice or deliver such account as aforesaid shall wilfully neglect to do so at the prescribed period, he shall be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty payable by him, or in the case of a succession chargeable with a higher rate of duty than one pound *per centum* upon the value thereof, upon such less sum as such duty, if assessable at the rate of one pound *per centum* upon the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue; and if any person liable under this Act to pay any duty shall, after such duty shall have been finally ascertained, wilfully neglect to do so within twenty-one days, he shall also be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty so unpaid, or upon such less sum as such duty, if assessable at the rate of one pound *per centum* on the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue.

Proceeding if return not made.

Sect. 47.—If any accountable party required by the commissioners to deliver any such account as aforesaid shall make default in doing so, it shall be lawful for the commissioners to sue, out of her Majesty's court of exchequer in England, Scotland, or Ireland, as they shall think expedient, according to the circumstances of the case, and for such court to issue a writ of summons in such form as the judges of such court shall from time to time frame, commanding the party so in default to deliver such account within such period as may be appointed in the writ, or to show cause to the contrary, and on cause being shown such order shall be made as shall be just.

Power to enforce returns from executors and administrators.

Sect. 48.—The commissioners shall, for the purposes of the Legacy Duty Acts, be empowered to require and enforce the delivery of accounts from executors, administrators, and trustees of property and legatees chargeable with duty under such acts, and for the duty whereon they shall be accountable, in the same manner as they are by the last preceding section of this Act empowered to require and enforce the delivery of accounts for the purposes of this Act.

Accounting party to verify his account by production of books and documents, and commissioners may, without fee, inspect and take copies of public books.

Sect. 49.—Every person who, under the provisions of this Act, may deliver any account or estimate of the property comprised in any succession shall, if required by the commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may be capable of affording any necessary information for the purpose of ascertaining such property and the duty payable thereon; and the commissioners may, without payment of any fee, inspect and take copies of any public book; but all such information shall be deemed to be confidential, and the commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act.

Sect. 50.—It shall be lawful for any accountable party dissatisfied with the assessment of the commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the place in which the appellant shall be resident; and every such court, or any judge thereof sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the court, or other person, as such court or judge may think fit: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district, county, or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of her Majesty's Court of Exchequer.

Power for accountable party to appeal.

Sect. 51.—Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the commissioners for this purpose, and the Receiver General of Inland Revenue, or other proper officer appointed by the commissioners, shall give a receipt for the same in such form as they shall think fit, and stamped with the proper stamp for denoting the rate of duty, and the commissioners shall from time to time deliver to any person interested in any property affected by such duty, on applying for the same for any reasonable purpose approved by the commissioners, a certificate, in such form as they may think fit, of such payment.

Duty to be entered by the commissioners in a book, and a stamped receipt to be given.

Sect. 52.—Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof, shall exonerate a *bonâ fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or mis-statement in the account upon the footing whereof the same may have been assessed, or any insufficiency of such assessment; and no *bonâ fide* purchaser of property for valuable consideration under a title not appearing to confer a succession shall be subject to any duty with which such property may be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase.

Protection to *bonâ fide* purchasers.

Sect. 53.—Whenever any suit shall be pending in any court for the administration of any property chargeable with duty under this Act or the Legacy Duty Acts, such court shall provide, out of any property which may be in the possession or control of the court, for the payment of duty to the commissioners.

Court in suits for the administration of property to provide for payment of duty.

Sect. 54.—This Act shall be taken to have come into operation on the nineteenth day of May, one thousand eight hundred and fifty-three, and shall take effect accordingly.

Commencement of Act.

Sect. 55.—This Act may be cited for all purposes as "The Succession Duty Act, 1853."

Short title.

[For the TABLE showing the values of an Annuity of 100*l. per annum*, held on a single life, *vide* page 805, *ante*.]

Advertisements.

THE DUTIES ON ADVERTISEMENTS are wholly repealed by the 16 & 17 Vict. c. 63.

Agreements.

BY the law as it existed previously to the 13 & 14 Vict. c. 97, the duty on an agreement under hand only, containing not more than fifteen folios (1080 words), was 2*s.* 6*d.*; but if that quantity of words was exceeded, the duty became, *per saltum*, 1*l.* 15*s.*, with a progressive duty of 1*l.* 5*s.* for every additional quantity of fifteen folios.

By the present law, the duty is only 2*s.* 6*d.* where the document contains any quantity of words less than *thirty* folios; and where the contents amount to or exceed that quantity, then, for every fifteen folios entire, above the first, a progressive duty of 2*s.* 6*d.* is charged. So that although previously to that Act, if the writing exceeded fifteen folios, the higher duty of 1*l.* 15*s.* immediately attached; under the present law the duty of 2*s.* 6*d.* is not increased unless the quantity of words amounts to thirty folios; and then, only by the addition of 2*s.* 6*d.* for the second entire quantity of fifteen folios; and so on; the like amount of duty for every such further quantity of words. This is a great relief in cases of contracts for the performance of works, where plans and specifications are annexed; and in others of a like character. Similar relief is afforded also where papers of this description, forming part of the contract, are not annexed, but are referred to. See "SCHEDULE," in the TABLE.

Request by tenant not to sell goods distrained, and undertaking not to replevy, &c.; not liable.

In *Fishwick* v. *Milnes* (*a*) a writing by which a tenant, upon whom a distress for rent had been made, requested the landlord to forbear the sale of the goods for a certain period, and whereby he did also "request, agree, and consent" that the goods should, in the meanwhile, remain on the premises at his cost, he undertaking,

(*a*) 4 Exch. Rep. 824; 19 L. J. R. (N. S.), Exch. 153.

to give up the same, and not to replevy, and that the distress should continue in full force, and that he would pay all the costs, was held not to require a stamp, the party in effect saying, "Go out of possession, and I will put you *in statu quo* when you come back."

Letter of allotment of shares; not liable.

In an action by an allottee of shares, in a projected railway, against a member of the committee, to recover back his deposit, it was held that the letter of allotment was properly received in evidence without a stamp, it not being liable to duty unless it agreed with the letter of application, which was not to be presumed, as the defendant refused to produce the latter (*b*).

Proposal. Letters offering terms to an actor not liable.

Letters by the proprietor of a theatre to an actor, offering terms, were held not to be an agreement liable to stamp duty; some other act beyond the letters being required to show the agreement. There being no proof of assent, they amounted merely to a proposal (*c*).

Prospectus of terms of a school not liable.

A prospectus was delivered by a schoolmaster to an agent of the appellant, who was desirous of placing two of his sons at the school, in which it was stated that the terms were sixty guineas *per annum*, and that three months' notice or payment was required previously to the removal of a pupil; but the schoolmaster agreed verbally, that so long as the boys remained together, only fifty guineas for each should be charged. The boys were afterwards sent to the school, and in the course of the following year removed without notice. An action was brought for the fee in lieu of notice; to sustain which the prospectus was admitted in evidence; the defendant objecting for want of a stamp. On appeal from the Judge's ruling, the Court held, that the prospectus was properly received in evidence; it was a mere proposal when delivered, and did not require a stamp; by adopting it and sending his boys to school, the defendant made it a contract (*d*).

Memorandum on a letter written to a third person.

In an action for salary, the plaintiff, who had been the defendant's clerk, gave in evidence a letter written by himself to another clerk, at the foot of which was written by the defendant the following note, *viz.*:—"*J. Dunn* commenced this day at 70*l.* to be paid 80*l.* if he remains twelve months; to be increased 10*l.* *per annum*, and give three months' notice of leaving;" the Court held that it required a stamp. It was produced by a party who relied upon it, and in whose custody it ought to be, supposing it to be evidence of

(*b*) *Moore* v. *Garwood*, 19 L. J. R. (N. S.), Exch. Ch. 15; 4 Exch. Rep. 681.

(*c*) *Hudspeth* v. *Yarnold*, 14 Jur. 578; 19 L. J. R. (N. S.), C. P. 321.

(*d*) *Clay, appellant; Crofts, respondent*, 20 L. J. R. (N. S.), Exch. 361.

the contract, which it purported to be. It came before the Court in a shape that bound their Lordships to hold it evidence of an agreement between the parties, and which it was intended to be at the time it bore date (*e*).

Acknowledgment of part of antecedent contract.

In *De Porquet* v. *Page* (*f*) the following document was held to be properly admitted in evidence without a stamp; *viz.* "Mem. I have this day received of Mr. *F. De Porquet*, a bill for 27*l.* 10*s.* at eighteen months date, on condition that Mr. *S. Douglas* accepts the partnership beyond two years, but should Mr. *D.* give notice at the expiration of eighteen months (the bill to be null and void) and not afterwards rescind the same.—*J. H. Page.*" There was a contract between the parties, which was, amongst other things, for the acceptance and delivery of a bill; on the performance of which part of it the memorandum was given. It was admitted that the acknowledgment might be *some* evidence of the contract, which was a distinct antecedent agreement; but the Court considered that such a memorandum did not require a stamp. It was held, also, not to be liable to duty in respect of any contract expressed in it, as the law would have implied the same consequence from the mere acknowledgment it contained. The bill would have been received without value if the condition was not performed (*g*).

Agreement to refer all matters in dispute, not liable.

VALUE.—A Judge's order was obtained to make an agreement for referring all matters in dispute to arbitration a rule of Court, but the officer refused to draw up the order, the agreement not being stamped; Mr. Justice *Erle*, sitting in the Bail Court, granted a rule, it not appearing, for certain, that the agreement related to a matter of the value of 20*l.*(*h*).

Contract to do brickwork by measurement; not liable.

In an action for money amounting to 48*l.* 12*s.* 4*d.*, on an agreement to do the brickwork of a building at 1*l.* 14*s.* per rod, the owner to find all materials, and screen the sand, the Court held such agreement to be admissible without a stamp, *Parke*, B., observed that "the value must be measurable, and capable of being ascertained at the time of making the contract; that if it does not then appear to be 20*l.*, a stamp does not become necessary because it turns out to be a little more than 20*l.* If, indeed, a man agrees to do the brickwork of a house, which it is clear, at the time of the

(*e*) *Dunn* v. *Mahom*, 8 Ir. Law Rep. 83.

(*f*) 20 L. J. R. (N.S.), Q. B. 28; 15 Jur. 148; 15 Q. B. R. 1073.

(*g*) See p. 28, *ante*.

(*h*) *Lloyd* v. *Mansel*, 19 L. J. R. (N.S.) Q. B. 192.

contract, must, at least, cost 100*l.*, in such a case a stamp would be necessary" (*i*).

Agreement to pay interest.

An agreement with a person discounting a bill for 100*l.* to pay interest at one shilling in the pound a month if the bill was not paid at maturity, was held to be admissible without a stamp, the subject matter, payment of interest, not being of the value of 20*l.* (*k*).

Exemptions.

SALE OF GOODS.—The following paper writing was held to be within the exemption as relating to the sale of goods, viz.:—

"Messrs. *C & W.*

"I have to request that you will supply Mr. R. Chatfield with such parcels of Roman cement as he shall require, to the value of 48*l.* 13*s.* 10*d.*, and charge the same to the account standing with you to my credit.

"*Robert Cox.*"

"Mr. *R. Chatfield.*

"On the consideration above named we agree to supply to your order, when you shall require it, Roman cement of the best quality, delivered within three miles at 1*s.* per kn., to the amount of 48*l.* 13*s.* 10*d.*

"*C. & W.* (*l*)."

Artificers, firemen, and stokers.

HIRE OF SERVANT.—In *Wilson* v. *Zulueta* (*m*) a question arose whether firemen and stokers on board of foreign steam vessels, going abroad, were artificers or labourers within the exemption contained in the 55 Geo. III. c. 184, of agreements for the hire of any labourer, artificer, manufacturer, or menial servant. It was contended that they were "mariners," and that there was a special exemption of agreements with mariners, but limited to those of ships on coastwise voyages; and the Merchant Seamen's Act, 7 & 8 Vict. c. 112, although extending only to British ships, was referred to, as showing the proper construction to be put upon this exemption; but the Court held that persons of the description in question were to be considered as artificers or labourers, and not as seamen.

Labourer.

An agreement was made by a person to take charge of glebe lands, his wife undertaking the dairy and poultry, &c., at 15*s.* a week till Michaelmas, 1850, and afterwards at a salary of 25*l.* a

(*i*) *Liddiard* v. *Gale*, 19 L. J. R. (N. S.), Exch. 160; 4 Exch. Rep. 816.

(*k*) *Semple* v. *Steinaw*, 22 L. J. R. (N. S.), Exch. 224.

(*l*) *Chatfield* v. *Cox*, 21 L. J. R. (N. S.), Q. B. 279; 16 Jur. 594.

(*m*) 14 Jur. 366; 19 L. J. R. (N. S.), Q. B. 49; 14 Q. B. R. 405.

year, and a third of the clear annual profits after the expenses of rent, &c. were paid, on a fair valuation made from Michaelmas to Michaelmas. Three months' notice on either side to be given, at the expiration of which the cottage to be vacated by W., who occupied as bailiff, in addition to his salary. It was objected that this was a contract of partnership, but the Court held that it was a hiring of a labourer, and within the exemption from stamp duty(*n*).

Apprenticeship.

Duty reduced where no premium is paid.

THE duty on an indenture of apprenticeship, where no premium is paid, is, by the 16 & 17 Vict. c. 59, reduced from 20*s.* to 2*s.* 6*d.*

Articled Clerks.

Reduction of duty.

THE stamp duty on articles of clerkship, in order to admission to the superior Courts, is, by the 16 & 17 Vict. c. 59, reduced from 120*l.* to 80*l.*

Articles for admission to Counties Palatine may be stamped with additional duty.

The duty of 60*l.* on articles intended to authorize admission to the Counties Palatine and other inferior Courts remains as before; but provision is made by sect. 7 of the Act for stamping articles entered into for admission in the Courts of the Counties Palatine, with the additional duty, so as to make up the full duty of 120*l.* or 80*l.*, as the case may be, according to the date of the articles, and to allow of the party's admission to the superior Courts. Before this enactment the entire duty of 120*l.* had to be paid in addition to the 60*l.* previously paid.

Assignment of Judgments in Ireland.

BY the 56 Geo. III. c. 56 *ad valorem* duties were imposed on assignments of judgments in Ireland, these securities having a peculiar character attached to them not appreciated in England. When

(*n*) *Reg.* v. *Wortley*, 21 L. J. R. (N. S.), Mag. 44; 15 Jur. 1137.

the Act of 5 & 6 Vict. c. 82, assimilating the stamp duties in Great Britain and Ireland was passed, these duties were repealed, and no specific duties being substituted for them, doubts arose under what head such instruments were chargeable, to remove which the duty of 1*l.* 15*s.* was, by the 16 & 17 Vict. c. 63, imposed on the assignment of any judgment in Ireland.

Attorneys and Solicitors.

THE annual certificate duties have been reduced by the 16 & 17 Vict. c. 63.—See TABLE.

Certificate granted, by mistake, for a wrong year, not available.

Certificates continue in force from the day they are granted until the 15th November following; and, if they are renewed within a month, they are required to be dated the 16th November, so as to cover the intermediate period; a certificate cannot, therefore, be granted before the 15th November to commence from that day. In October, 1848, an attorney applied for a certificate for the then current year, to expire on the 15th November 1848; by mistake the officer made it out as for the period from October, 1848, to the 15th November, 1849, and it was set up by the attorney as sufficient to cover that period, but the Court held that such a certificate could not be granted in law, and, therefore, could not be available for any part of the year 1849 (*o*).

Terms between solicitor and agent for conducting a suit, the former being without a certificate.

The Master of the Rolls held that it was not incompetent for a solicitor, a party to a suit, who was without his annual certificate, to agree with another solicitor for conducting the suit on the terms of agent and solicitor; there was nothing in such an arrangement contrary to law; it was, therefore, binding on the solicitor undertaking the suit (*p*).

Attorney of inferior Court acting in superior Court without admission.

An attorney of the Court of Great Sessions in Wales, enrolled under the 1 Will. IV. c. 70, s. 16, on payment of 1*s.*, but not admitted under the 17th section, is guilty of a contempt in acting as an attorney in the conduct of a suit commenced against a person residing out of Wales, although the proceedings be in the name of an agent. He cannot be admitted in any of the Courts at Westmin-

(*o*) *Ex parte Duke of Brunswick, In re the Sureties of W. Crowle*, 19 L. J. R. (N. S.), Exch. 112: 4 Exch. Rep. 492.

(*p*) *Ex parte Foley, In re Smith*, 11 Beav. 456.

ster, except upon payment of the additional duty of 60*l.* on his Articles (*q*).

Where attorney off the Roll under 37 Geo. III. c. 90, s. 31, re-admission not required. Order to renew certificate sufficient.

An attorney who had not taken out his certificate since 1841, and whose admission, therefore, at the time of the passing of the 6 & 7 Vict. c. 73, was, by the operation of the 37 Geo. III. c. 90, s. 31, null and void, applied for re-admission, or for an order authorizing the Registrar to renew his certificate. It was suggested by the Counsel whether re-admission was not absolutely requisite; but the master informing the Court that the practice, in such cases, was merely to renew the certificate, Mr. Justice *Patteson*, fearing that an order for re-admission might be considered as affecting the positions of those who had, under the same circumstances, merely taken out certificates, granted a rule in the usual form (*r*).

An uncertificated attorney is disabled from suing only for fees for business done in some Court.

An attorney, who is without his certificate, is disabled from suing for fees, only in respect of business done in some suit or proceeding in one of the Courts mentioned in the 6 & 7 Vict. c. 73. In an action by an attorney for his bill of costs, the defendant pleaded, that, as to a certain portion, it was composed of fees, &c., alleged to be due for business done by the plaintiff, as an attorney, whilst he was without a certificate; to which the plaintiff demurred, specially, assigning for cause that it was not alleged that the business was done in or relating to any proceedings in any Court whatsoever. The demurrer was allowed (*s*).

An uncertificated attorney acting gratuitously at sessions allowed to renew his certificate on terms.

An attorney who, whilst without a certificate, had placed his name as an attorney upon briefs for counsel at Quarter Sessions was allowed, upon showing by affidavit that he had acted gratuitously and from motives of kindness, to renew his certificate upon paying three years' duty, and a fine of 6*l.* (*t*).

Bargain and Sale, or Lease for a Year.

THE duty in respect of instruments of this description, whether upon the lease for a year itself, if the mode of conveyance by lease and release should now be resorted to; or upon a release; or a grant under the 4 & 5 Vict. c. 21, or the 8 & 9 Vict. c. 106, is wholly repealed. There can be no doubt of the great convenience of this provision, to say nothing of the relief afforded by it.

(*q*) *Re Humphrey*, 19 L. J. R. (N. S.), Q. B. 65; 14 Q. B. R. 388.

(*r*) *Ex parte Howard*, 20 L. J. R. (N. S.), Q. B 27.

(*s*) *Richards* v. *Lord Suffield*, 2 Exch. Rep. 616; *Greene* v. *Reece*, 4 Exch. Rep. 88.

(*t*) *Re Taylor*, 16 Jur. 728.

Bills of Exchange, and Promissory Notes.
Bankers.

THE stamp duties on Bills of Exchange and Promissory Notes, with the exception only of those on bankers' re-issuable notes (payable to bearer on demand and not exceeding 100*l.*), have by the Acts of 1853 and 1854 undergone an entire change. For the duties after the 10th October, 1854, see the TABLE. Alteration in duties.

The only alteration made by the Act of 1853 (16 & 17 Vict. c. 59), is that of reducing to one penny the duty on a draft or order for the payment of money, whatever the amount may be, to the bearer or to order on demand.

But it is provided, that all documents or writings usually termed letters of credit, or whereby any person to whom any such document or writing is, or is intended to be delivered or sent, shall be entitled or be intended to be entitled to have credit with, or in account with, or to draw upon any other person for, or to receive from such other person any sum of money therein mentioned, shall be deemed and taken to be bills, drafts, or orders for the payment of money within the intent and meaning of that Act, and of any Act or Acts relating to the stamp duties on bills, drafts, or orders, and be chargeable with the stamp duties imposed thereby. Letters of credit.

Documents falling within this description were, previously, unquestionably bills of exchange; and the Court of Common Pleas had, as will presently be seen, so decided: but the practice of issuing them without stamps having become general, and their illegality not being a point commonly believed, it was not thought proper by the authorities to interfere with them whilst the late duties existed, and until some enactment specially declaring them to be chargeable had passed the legislature.

Letters of credit are for the most part not transferable; and it is well that all under 5*l.* should be so; it being unlawful to issue any negotiable bill of exchange for a sum under 20*s.*; and all negotiable or transferable bills for 20*s* or upwards, and less than 5*l.* being required to be issued, and endorsed with certain formalities; that is to say,—the name and residence of the person to whom or to whose order any such bill is payable, must be specified;—it must bear date before or on the day of drawing or issuing, and not after;—it must be made payable within twenty-one days after date, and not be transferable or negotiable after the time limited for payment;—every indorsement must be made within the same time, and bear

date on the day it is made, and specify the name and residence of the indorsee;—and the signing of the bill and every indorsement must be attested.

The statutes containing these provisions relating to transferable securities under 5*l.* are 17 Geo. III. c. 30, and 18 Geo. III. c. 83, in England; 8 & 9 Vict. c. 37, in Ireland; and 8 & 9 Vict. c. 38, in Scotland.

Cheques on bankers.

Cheques on bankers in England were subject to the same regulations until they were excepted by the 17 & 18 Vict. c. 83.

The exemption in favour of cheques continues, except that they are not allowed to circulate unstamped at any place beyond fifteen miles from the bank where they are payable, a penalty of 50*l.* being imposed on any person sending to, or receiving in payment or as a security, or circulating at any place exceeding that distance, any such unstamped cheque. But it is competent to a person who has received an unstamped cheque within the distance to affix to it and cancel the necessary (penny) stamp, and thereby give currency to the cheque at any place. The drawer, by affixing and cancelling the stamp, may issue it at or send it to any distant place; and if he please he may make it payable to order instead of to bearer; the banker, however, is relieved from proving the indorsement purporting to be that of the payee. The validity of a cheque is not affected by the circumstance of its having been unlawfully circulated at more than fifteen miles from the banker.

Place of issuing a cheque.

The place at which a cheque may be said to be issued is sometimes a question. The time when the drawer parts with the possession and control of a cheque must determine the place of issuing. If it be sent by the post to the person for whom it is intended, or to any one on his behalf, the place of posting is necessarily that of issuing. But so long as it remains in the hands of the drawer, or his agent, it is un-issued; and, therefore, if it be transmitted by post or otherwise to a servant of the drawer, or to an agent for delivery, there can be no issuing until the servant or agent disposes of it. See *The Queen* v. *Perry*, 1 Car. & K. 725, in which this seems not to have been disputed.

Rates of duties on bills.

The different rates of duties on drafts are now only two, applicable to two descriptions of drafts, viz., those on demand, and those not on demand; the distinction between what are termed long and short dates being done away with.

All drafts or orders, whatever form they may assume, payable on demand to bearer, or to order, and stamped with the penny

duty, are subject to all the incidents of ordinary bills of exchange, and may therefore be transferred or negotiated; and a receipt for the contents indorsed upon any such draft, when paid, requires no stamp.

A draft in general terms, not specifying any time of payment, is payable on demand: and a draft not made payable to bearer or to order, is, if delivered to the payee or to any person on his behalf, chargeable with the same duty, according to its tenor, as if made payable to bearer or to order.

It will be noticed that no stamp duty is chargeable on drafts for sums not amounting to 40*s.*, except that of one penny, under the Act of 1853, on such as may come within the terms specified.

Foreign bills.

The duties on foreign bills are wholly altered. Previously to the 17 & 18 Vict. c. 83, the only foreign bills subject to duty were those drawn in, but payable out of the United Kingdom. Now, bills drawn abroad are, if made payable, or if negotiated within the kingdom, also charged; the duty on them to be denoted by adhesive stamps, to be affixed and cancelled (under a penalty of 50*l.*) before the bills are presented for payment, or indorsed or negotiated. No such bill is capable of being made available for the benefit of any person receiving the same without a stamp thereon properly cancelled.

To prevent fraudulent practices, or injury to innocent holders, all bills purporting to be drawn abroad are to be deemed to have been so.

With the view to stopping the practice of drawing one bill only, but purporting to be in a set, a penalty of 100*l.* is imposed on the drawer of such a bill; any person negotiating a bill purporting to be one of a set, and not transferring or delivering the whole set, being subjected to a like penalty; and it is provided that no such bill shall be available to any person receiving the same within the kingdom.

What shall be deemed bank notes

An extended description of what are to be deemed bank notes within the Acts for limiting the circulation of notes issued by bankers, is given in the 17 & 18 Vict. c. 83.

Discount on bill stamps. No charge to be made for the paper.

A discount of seven and a half per cent. is granted on the purchase, to the amount of 5*l.*, of bill or note stamps not exceeding the duty of 1*s.*; on the sale of which stamps by dealers no charge is be made for the paper, under a penalty of 10*l.*

See the new provisions relating to bills and notes, page 993.

The penny adhesive stamps, whether purporting to be for bills or receipts, may be used indiscriminately for either.

Authority to a debtor to pay money to a third person, on account, and agreement of debtor to pay, liable as an agreement, not a bill.

W & Sons, typefounders, wrote to a person to whom they had supplied type, as follows, *viz.* :—

"Dear Sir—We hereby authorize you to pay, on our account, to the order of *W. G.*, 6000*l*, at the following periods, deducting the amount from the quarterly accounts furnished to you and to Messrs. *E. & S.*, *viz.*, 11th November, 1843, 1000*l*. [&c.]

"Yours, &c, *A. W. & Sons.*"

Underneath which, the person to whom it was addressed, wrote,

"To *W G.*,—Having received the foregoing authority, I undertake to make you the payments above stated. "*A S.*"

The Court held that the first letter did not require to be stamped as a promissory note or a bill of exchange, but that the two letters constituted an agreement liable to stamp duty (*x*).

Letter of credit

A letter of credit, in the following form, *viz.* :

"Marine Department. Sea, Fire, and Life Assurance Company. 10th Sept., 1849.

"To the Cashier.

"Fifty-three days after date credit Messrs. *Plummer & Co.*, or order, with the sum of 500*l*. claimed for the *Cleopatra*, in cash, on account of this Corporation.

(Signed) "AUGUSTUS COLLINRIDGE, Managing Director," was held in *Eddison* v. *Collinridge* (*y*) to be a good bill of exchange. It was an order to pay money; and no other intent could be inferred but that it should be paid when presented. Mr. Justice *Cresswell* observed that the meaning of credit in cash was, to pay over the money.

The same point, which was attended with the like result, arose in *Allen* v. *The Sea, Fire, and Life Assurance Company* (*z*). It was argued, that "credit in cash" might mean "pay by way of set-off;" but the Court considered it to be equal to "pay in money." The verdict was on a count describing the document as a promissory note; and it was submitted that, by substituting the word "pay" for "credit in cash," the instrument would become a bill of exchange, as the similar one in *Eddison* v. *Collinridge* was held to be; but *Wilde*, C. J., observed, that it was addressed to the clerk of the drawers; which was the same as a person drawing a bill on himself, and *Edis* v. *Bury* (*a*) was referred to.

Pay "ninety days after

A writing in the usual form of a foreign bill, but requesting the drawee to pay "ninety days after, or when realized," was held

(*x*) *Hamilton* v. *Spottiswoode*, 18 L. J. R (N S.), Exch. 393; 4 Exch. Rep. 200.

(*y*) 9 C. B Rep 570; 19 L. J. R. (N. S), C. P. 268; 14 Jur. 869.

(*z*) 9 C. B R. 574, 14 Jur. 870, (note).

(*a*) 4 B. & C 433

not to be a bill of exchange, being payable on a contingency. The object was to extend the time of payment beyond the period specified, in the event of the drawee not being in funds (*b*).

sight, or when realized," not a bill.

It was objected to in *Absolon* v. *Marks* (*c*), that the joint and several promissory note of five persons, payable to their and each of their order, indorsed, in blank, by all, was not a negotiable note within the statute of Anne; the note was as follows, *viz.*:

Note of several payable "to our and each of our" order.

"Six months after date, we jointly and severally promise to pay to our, and each of our order, 750*l.*, for value received.

(Signed) "ROBT. MARKS"
[and four others].

It was contended that it was void by reason of its uncertainty; but the Court was of opinion that there was no ground for the objection, since the jury had found that the defendant had indorsed the instrument, which was thereby made certain.

The following was held, in *White* v. *North* (*d*), not to be a promissory note within the Stamp Act, but an agreement, *viz.*:

Promise to account.

"Nottingham, Aug. 5, 1844.

"Borrowed of Mr. *Joseph White* the sum of 200*l.* to account for on behalf of the Alliance Club at * months' notice if required.

"*K. S.*, Treasurer,
"*T. G.*, Secretary,"
[&c.]

The same was held in another case, on the same day, in reference to precisely the same description of instrument, except that the blank was filled up with the word "two" (*e*).

And in a subsequent case, a memorandum—

Acknowledgment of loan for a period.

"Borrowed this day of *J. H.* 100*l.* for one or two months; cheque, 100*l.* on the Naval Bank,"

was considered as a mere acknowledgment not requiring a stamp either as a promissory note or an agreement (*f*).

A debenture was issued by a joint-stock company for payment "to [ ]" of a principal sum; and further, for payment to the holder of the warrants annexed, on presentment thereof as they

Warrants for interest on a debenture.

(*b*) *Alexander* v. *Thomas*, 15 Jur. 173; 20 L. J. R., Q. B. 207; 16 Q. B. R. 333.
(*c*) 11 A. & E. (N. S.), 19.
(*d*) 3 Exch. Rep. 689; 18 L. J. R. (N. S.), Exch. 316.
(*e*) *Ib.* (note).
(*f*) *Hyne* v. *Dewdney*, 21 L. J. R. (N. S.), Q. B. 278.

should fall due, interest on the said sum, at 5*l.* per cent. The debenture was stamped both as a deed and a promissory note, but there was no stamp on any of the warrants, which were in the form following, *viz.*:

"The Governors and Company of Copper Miners in England. Warrant for 12*l.* 10*s.*, for half a year's interest, on debenture, No. 5252, due 15th January, 1849, to *J.*, Secretary."

It was held that the warrants were not promissory notes (*g*).

Promise to pay and give further security.

In *Follett* v. *Moore* (*h*), a document in the following terms, being something more than a promise to pay money, was, likewise, held not to be a promissory note, *viz.*:

"I promise to pay Mr. *H. C. M.* or his order, on demand, the sum of 500*l.*, for which I agree to give him 7*l. per cent. per annum*; and also to give him my life policy, &c., and the lease of my house, &c., in default of payment."

So, also, in *Mitchell* v. *Westover* (*i*), a writing stamped with 2*s.* 6*d.* as an agreement, and purporting to be an agreement between parties for disposing of the remainder of a lease and the fixtures, but concluding thus, *viz.*, "And the said *J. M.* doth at the same time and place lend to the said *F. W.* the sum of 84*l.* in cash, to be repaid by instalments," was held to be sufficiently stamped. The whole was one entire bargain, one incident of which was a loan.

Bill or note at option of payee.

In *Lloyd* v. *Oliver* (*k*), a writing as follows, *viz.*:

"Two months after date I promise to pay to *A. B.* or order, 99*l.* 15*s.* "H. OLIVER.

"To *J. E. Oliver.*"

with the words, "Accepted, payable, *S. & A.* Bankers, London, J. E. Oliver" written across it, was held to be properly treated, and declared upon as a bill of exchange.

See *ante*, p. 136, as to cases of this class, in which the holder is at liberty to treat the document either as a bill or note. It may be important, however, in reference to such cases, to direct attention to the fact of the difference of duty now, in some cases, between bills and notes, in consequence of the reduction of the duty on all drafts or orders payable to the bearer, or to order, on demand,

(*g*) *Enthoven* v. *Hoyle*, 21 L. J. R. (N. S.), C. P. 100; 16 Jur. 272.
(*h*) 4 Exch. Rep 410.
(*i*) 14 Jur. 816.
(*k*) 21 L. J. R. (N. S.), Q. B. 307; 16 Jur. 833.

A document partaking both of the character of a promissory note and a bill of exchange, stamped with this reduced duty, could not be safely declared upon as a promissory note.

Post-dated cheque not absolutely void.

It was observed by the Court, in *Watson* v. *Poulson* (*l*), that a post-dated cheque was not absolutely void; it was defective for want of a stamp, and subjected the parties to a penalty; but that if the banker paid it without knowledge of the false date, the payment was good. See page 149, *ante*, upon this subject.

Admitted to prove fraud.

The Court said, also, in this case, that there could be no doubt that a post-dated cheque was admissible to prove fraud, although, like any other instrument not duly stamped, it could not be used to establish a valid contract.

Crossed cheques

The result of the question as to crossed cheques, so much agitated in the case of *Bellamy* v. *Marjoribanks* (*m*), and which so long engaged the public attention, renders scarcely necessary any allusion to it in reference to the Stamp Laws; but the point may be glanced at. It was attempted to give to a cheque, that is, an unstamped draft on a banker, payable to the bearer on demand, the effect of a draft payable to order, by limiting the payment to the persons whose names were written across it by the holder. It is obvious that this would have deprived the instruments exempted from stamp duty of the character upon which the exemption was based. It was agreed between the parties that the question should be entertained without regard to the Stamp Laws, treating the document as if properly stamped, or as if liable to no duty in any event; but Mr. Baron *Parke*, in giving judgment, said that a custom restricting the payment of a cheque on a banker to the person whose name is written across it, if it had been proved to have existed in fact, would be incapable of being supported in law. The crossing of a cheque cannot operate as an indorsement to the banker whose name is used; it was not written with any intent to transfer the property in it to him; and it wants an essential part of an indorsement, the delivery of the instrument to the indorsee. And it cannot be supposed that the usage is to be considered as equivalent to a direction by the holder, or drawer, to the drawee not to pay to the bearer, but to a particular person only, for then the cheque would be altered in a manner that would take it out of the exemption of the Stamp Act, which applies to cheques payable to bearer only, and the banker to whom it is addressed would not be bound to pay the person named.

(*l*) 15 Ju . 1111.

(*m*) 7 Exch. Rep. 389.

Alteration of bill. *In fieri.*

ALTERATION OF BILL.—In an action by an indorsee against the acceptor of a bill at two months, the defence was that the bill had been altered. The bill was originally drawn at three months, in which state it was accepted, for the accommodation of the drawer, and indorsed, and sent to the indorsee, who, expecting to receive a bill at two months, returned it to the drawer, insisting on a bill at a shorter date; in a post or two he received it back altered to two months. The assent of the defendant to the alteration was proved, and a verdict returned for the plaintiff, with leave to move to enter a nonsuit on the ground that the stamp had been exhausted by the bill as first drawn.

The Court refused a rule, *Wilde*, C. J., thinking it a very clear case. It was no more than if all three had met, and, before the bill had passed out of the hands of the payee, the alteration had been made with the acceptor's assent (*n*).

Returns verified by a "cashier."

JOINT-STOCK BANKS.—In an application against a shareholder, the returns to the Stamp Office under the 7 Geo. IV. c. 46, of which certified copies were produced, were objected to, as verified only by a person styling himself "cashier" of the company, it not appearing thereby that such person was the "secretary or other public officer;" but they were held to be sufficient; Mr. Justice *Erle* observing that the statute did not make it indispensable that the person should appear, by the return itself, to be a public officer (*o*).

Return subsequent to issuing of writ admitted.

In order to prove that a person against whom a *scire facias* had been issued was a shareholder at the time of issuing the writ, the Stamp Office returns made in March previously, and also in March subsequently to that period, were received in evidence. On motion for a new trial, it was objected that the latter return was improperly received; at least, that the evidence was irrelevant. The Court, however, considered that it was both relevant and proper, although the evidence offered on the other side rendered it nugatory (*p*).

Plea to action on note that return not made, bad.

To an action on a note the defendant pleaded, that the company had not delivered at the Stamp Office a return pursuant to the 7th Geo. IV. c. 67. It was held to be bad, the delivery of an account

(*n*) *Tarleton* v. *Shingler*, 7 M. G. & S. 812.

(*o*) *Harvey* v. *Scott*, 11 A. & E. (N. S.) 92.

(*p*) *Bosanquet* v. *Shortridge*, 14 Jur. 71; 4 Exch. Rep. 699.

not being a condition precedent to the right to recover on a promissory note (*q*).

In *Bullock* v. *Chapman* (*r*), the Vice-Chancellor of England refused an injunction to restrain the public officer from including the plaintiff's name in the return; observing, however, that although such return was to be made under an Act of Parliament, and on oath, it did not follow that a case could not be made out which would induce the Court to grant an injunction.

Injunction to exclude a name from the return.

Bonds.

BONDS, of almost every kind, are materially affected by the Act of 1850. The *ad valorem* duties, which, before, stopped at 25*l.*, and were not increased beyond that sum, whatever amount of money was secured, are now a per-centage, without limit; affording relief in nearly all cases of securities for sums under 10,000*l.*, and, with very few exceptions, increasing the charge in cases of sums above that amount.

New rate of duties.

Bonds given for securing future advances, without limit, are chargeable with duty on the amount of the penalty, in lieu of the maximum duty of 25*l.*, as heretofore; but where there is no penalty (as in Scotland), it is provided that the bond shall be available for any amount that the duty on it will extend to cover.

Bonds without limit.

The *ad valorem* duty on bonds for securing the transfer of stock, which was confined to the stock and funds of the Bank of England, the Bank of Ireland, the East India Company, and the South Sea Company, is now extended to the stock and funds *of all other companies and corporations;* with a slight variation, as to all, in the mode of ascertaining the value of the stock in some instances.

For securing transfers of stock.

Mortgage bonds, of even date with the mortgage, were, heretofore, charged with a duty of 1*l.*; they are now charged with that amount as a maximum duty; that is, where the money, or the value of the stock secured, exceeds 800*l.*, and where it does not, then with the *ad valorem* duty; but it is required that the mortgage *shall be referred to* in the bond; which was not the case under former Acts.

Mortgage bonds.

Bonds given by way of additional security for money already

Bonds as additional security.

(*q*) *Bonar* v. *Michell*, 19 L. J. R. (N. S.) Exch. 302.

(*r*) 2 De Gex & Sm. 211.

secured by bond or mortgage, are charged with a maximum duty of 1*l.* 15*s.*; but with the *ad valorem* duty, which is of less amount, where the money secured does not exceed 1400*l.* No such privilege previously existed; bonds for securing money or stock being, in all cases, except in that of a mortgage of even date, chargeable with *ad valorem* duty.

Annuity bonds.

Annuity bonds given, as a collateral or auxiliary security, on the *creation and sale* of an annuity, were charged with a duty of 1*l.*; they are now chargeable with that amount only where the *ad valorem* conveyance duty on the grant is of the same, or greater amount; when it is less, the duty on the bond is less also.

The *ad valorem* duties on bonds, for securing annuities, not upon creation and sale, are now a per-centage, affording relief in the case of annuities of small amount, and, for the most part, somewhat increasing the duties in respect of annuities exceeding 200*l.*

Bond of any other kind.

Bonds of any other kind, or description, are chargeable with the same duties as before; except in any case where a bond, if given to secure the payment of money of the same amount as the penalty of such other bond, would require a less duty; in which case, such less duty, only, is to be charged.

This latter provision will be felt, in many instances, to be highly advantageous; for instance, a bond of indemnity, or for faithful service, or any other purpose than the mere ordinary payment of money, was chargeable with 1*l.* 15*s.* in all cases, whether the penalty was 100*l.* or 1000*l.*, or any greater or less amount; under the new law, such a bond, in 100*l.*, will require only a duty of 2*s.* 6*d.*; in 1000*l.*, 1*l.* 5*s.*; and the penalty must amount to 1400*l.* before the maximum duty of 1*l.* 15*s.* will become payable.

Assignments of bonds.

ASSIGNMENTS of bonds given for securing money or stock, which were, heretofore, subject to 1*l.* 15*s.*, are to be liable to that duty only where the bond itself is chargeable with *ad valorem* duty of the same, or greater amount; in other cases, the assignments are to be stamped with the same duty as the bonds.

Assignments of bonds and mortgages of public companies, upon which quadruple *ad valorem* duties have been originally paid are, by the 16 & 17 Vict. c. 59, s. 14, exempt from duty.

Bond stamped with *ad valorem* duty, and mortgage not duty stamped.

A bond, dated the 5th December, 1812, was given to secure the transfer of 877*l.* 4*s.* 1*d.* Consols, and was stamped with 3*l.*, the proper *ad valorem* bond duty for securing that amount of stock under the 48 Geo. III. c. 149. At the same time, an agree-

ment, reciting the bond, and accompanied by a deposit of title-deeds for making a mortgage, by way of collateral security, was also executed; the agreement was stamped with 16*s.* only. A bond, accompanied with a deposit of title deeds for making a mortgage, was, as well as an agreement, charged by the said Act under the head "*Mortgage*," the duty on such an instrument for securing the said amount of stock being 4*l.* On arguing a Bill of Exceptions, it was contended that the bond was within the description of instrument so charged under the head of mortgage, and was, therefore, insufficiently stamped; or, that it was a bond accompanying an instrument chargeable with duty as a mortgage, both forming one security, and that such instrument not being properly stamped, neither of them could be received; but the Court held that the bond itself being sufficiently stamped, there could be no valid objection to its being received in evidence; the fact of another instrument, connected with the transaction, not being properly stamped, was no ground for rejecting the bond (*s*).

Bond for securing a principal sum and premiums on a life policy effected as a collateral security.

A bond was given for securing a sum of 300*l.* advanced, and also interest and premiums on a policy of assurance effected as a collateral security. It was stamped with the *ad valorem* duty on 300*l.*, but it was contended that it ought to have been stamped as a bond securing an unlimited amount. The plaintiff was nonsuited with leave to move to enter a verdict. On motion the Court (*Parke*, B., dissenting) held, that it was sufficiently stamped. The only money that could be recovered under it was 300*l.* Mr. Baron *Parke's* impression was, that the premiums would also be recoverable, but on this point the rest of the Court differed from him (*t*). After the trial, and before the motion, the deed was produced to the Commissioners of Inland Revenue, who impressed upon it the adjudication stamp, signifying that it was sufficiently stamped; but the Court could only have regard to the state in which the deed was at the time of the trial; although on any other occasion it could not be objected to as improperly stamped.

(*s*) *Blair* v. *Ormond*, 14 Jur. 191; 19 L. J. R. (N. S.), Q. B. 228; 14 Q. B. R. 732.

(*t*) *Prudential Mutual Assurance Company* v. *Curzon*, 22 L. J. R. (N. S.), Exch. 85; 8 Exch. Rep. 97.

Charter, &c., in Scotland.

THE stamp duty of 9*s.* on certain instruments in Scotland, charged under the heads of CHARTER, PRECEPT of *clare constat*, RESIGNATION, and SEISIN, respectively, is reduced by the 13 & 14 Vict. c. 97, to 5*s.*

Conveyance on Sale.

THE mode of imposing the *ad valorem* duties on conveyances upon sale is, likewise, varied by the last-mentioned Act, by adopting a per-centage and carrying it up *ad infinitum;* not stopping, as before, at 1000*l.*, where the purchase-money exceeded 100,000*l.* This is an improvement in principle; but the official practical inconvenience resulting from the alteration must, necessarily, be very great, in reference to furnishing the supply of stamps throughout the country. The same may, also, be said of the cases of bonds and mortgages. The new duty is 10*s. per cent;* the repealed duty was as near an approximation to 1*l. per cent* as was, doubtless, considered practicable. With the exception of the first few items, the duty on the mesne sums, in the different steps of the scale, was precisely 1*l. per cent;* the reduction, therefore, is very great, and no advantage to the Revenue will, in any case, be gained, where the purchase-money does not exceed 200,000*l.*

The *ad valorem* duty, varying between 10*s.* and 1*l.* 15*s.* imposed, immediately after the scale of duties, in the 55 Geo. III. c. 184, on a feoffment, and a bargain and sale enrolled, in certain cases (intended as an equivalent for the duty on a lease for a year), is, altogether, repealed. See *ante*, page 7.

The only other alteration under this head, by the Act of 1850, except in the amount of the duties, is that of charging the *ad valorem* duty in sales where the consideration is stock, either in the public funds, or the funds of any corporation, company, or society; the value of which, to be ascertained in the mode pointed out, is to be specified in the conveyance.

The 16 & 17 Vict. c. 59, imposed a specific *ad valorem* duty on a conveyance made in consideration of any annual sum payable in perpetuity or for any indefinite period; but this duty has been again repealed, and another substituted by the 17 & 18 Vict c. 83. See TABLE.

Ad valorem conveyance duty granted on sales for annuities, &c.

There are also in the Act of 1850 some special provisions for securing the *ad valorem* duties on conveyances One is contained in sect. 10, and was rendered necessary by an unlooked for decision as to the duty on conveyances upon the sale of property subject to mortgages. See *ante*, page 889.

Duty payable on all mortgages, &c., charged on the property sold.

Another provision is in sect 11, and subjects conveyances upon sale, in consideration of redeemable annuities, with *ad valorem* duty on the sums for which the redemption is stipulated. This resulted also from a decision of the Court (*u*).

Also on the redemption money, in sales for annuities.

On the sale of the good-will of a business, or of premises to which good-will is attached, a practice has prevailed of not paying *ad valorem* duty on the transfer of the good-will, or on the conveyance of the premises in respect of so much of the consideration as is apportioned as the purchase-money of the good-will, the latter being omitted to be set forth in reliance on what LORD ELLENBOROUGH is reported to have said on a trial at *nisi prius*, as warranting that course. But on a Case stated by the Commissioners of Inland Revenue (*x*) where, on the dissolution of a partnership, a continuing partner purchased of the partner retiring his share of the good-will of the business for 20,000*l.*, the Court was of opinion that the practice was not justified by the case referred to; that good-will was clearly property within the meaning of the Stamp Acts, upon the sale of which, or of the house where the trade was carried on, (the value of which house was enhanced by the good-will,) the full consideration ought to be stated in the instrument of conveyance, and *ad valorem* duty charged upon it. In consequence of this decision parties sought exoneration from the penalties they might have incurred under the 48 Geo. III c. 149, in such cases, and that the conveyances might be made good, notwithstanding the proper duty was not paid; which benefits have been given by the Act of 1854.

Sale of good-will.

In an action of debt for rent on a lease, the defendant pleaded a set-off for money had and received, under the following circumstances:—The plaintiff had granted to the defendant a prior lease,

A purchaser, having a right to recover back purchase-mo-

(*u*) *The Plymouth, Great Western Dock Company, and the Commissioners of Inland Revenue*, 22 L. J. R. (N S), Exch. 188; 8 Exch. Rep. 378.

(*x*) *Potter and the Commissioners of Inland Revenue.*

ney not mentioned in the conveyance, may set it off.

at a certain rent, and for a premium of of 40*l.*; but, being indebted to him for work and labour, it was agreed that the debt should be treated as payment of the premium; but no mention was made of the premium in the lease, and the defendant considered that, under sect. 24 of the 48 Geo. III. c. 149, he had a right to recover it back; and that he could set it off against the demand for rent. The Judge was of this opinion, and directed the jury to find for the defendant, if they thought that the 40*l.* was agreed to be given by the defendant in money or money's worth, as the premium for the lease; and the jury found for the defendant accordingly.

On motion for leave to enter a verdict for the plaintiff, the questions were, *first*, whether a lease was a conveyance within the 48 Geo. III. c. 149; *secondly*, whether, assuming it to be so, the money must not be recovered by action, or could be the subject of set-off; and, *thirdly*, whether the premium could be considered as paid, no money having passed. The Court held the affirmative on all points (*x*). See also the *Attorney-General* v. *Brown*(*y*) as to the first point.

A partition is not a sale, where money is paid for equality, and such money therefore cannot be recovered back if not specified.

Where a partition of lands is made among persons having a joint interest, and money is paid by any of them to any of the others for equality of partition, the person paying the money is in the nature of a purchaser of the excess of property apportioned to him, and it is, therefore, provided by the 55 Geo. III. c. 184, under the title PARTITION in the Schedule, that the deed of partition shall, in such case, be chargeable with *ad valorem* duty, as a conveyance upon sale, where the money so paid would, under that Act, give a higher amount of duty than the common deed stamp of 1*l.* 15*s.*; that is, where it amounts to 300*l.* or upwards. The Court of Queen's Bench, however, has by its decision in the case of *Henniker* v. *Henniker* (*z*)—if the opinion be correct, which it is respectfully submitted cannot be—materially affected this duty, by holding that a partition is not a sale within the meaning of the Stamp Acts, so as to admit of the operation of the provisions in the 48 Geo. III. c. 149, made for securing the *ad valorem* duties on conveyances upon sale. The case referred to was an action upon a bond given to secure the payment of money, exceeding 300*l.*, agreed to be paid for equality of partition, but not set out in the deed of partition. It was contended, on behalf of the defendant, that as he

(*x*) *Gingell* v. *Purkins*, 19 L. J. R. (N. S.), Exch. 129; 4 Exch. Rep. 720.

(*y*) 18 L. J. R. (N. S.), Exch. 336; 3 Exch. Rep. 662.

(*z*) 22 L. J. R (N. S.), Q. B. 94; 1 El. & B. (Q. B.) 54.

might, under the said Act of the 48 Geo. III., recover back his purchase-money, in consequence of its not being mentioned in the deed, the bond could not be enforced; but the argument was not available by reason of the opinion above stated.

As to what is deemed *property* under the head "CONVEYANCE" as well as "MORTGAGE," in reference to the case of *Warren* v. *How*, see *post*, "MORTGAGE."

Conveyance upon sale by separate vendors.

SEVERAL PARTIES.—The somewhat recent case of *Wills* v. *Bridge* (*a*), is only to be accounted for by supposing the counsel not to be aware of the special clause applicable to it. The report of the case is not altogether intelligible, either in the statement of the facts or the judgment. The action was that of covenant against the transferee of certain shares in an insurance company. It is to be collected from the report of the whole case, that three persons joined in conveying sixty shares to the defendant, upon sale for one gross sum, upon which the *ad valorem* duty was paid. The deed did not disclose the respective interests of the parties, but it appeared in evidence that they were possessed of the shares in the proportions of thirty, twenty, and ten; and it is stated to have been objected that there was only one "deed stamp." The deed was admitted, and a verdict for the plaintiff returned; but with leave to move to set it aside, and enter a nonsuit. On motion it was contended, that to permit a joint conveyance of this kind would be to authorize an evasion of the stamp laws. The Court took time to consider the question; and, on delivering judgment, the Lord Chief Baron is reported to have said as follows, *viz.*:—"Such a deed, no doubt, if it is executed by the parties, conveys the separate interest of each; there is no objection to that; it does not require three deeds or three deed stamps. With respect to the *ad valorem* stamp, that is calculated upon the whole shares; there is no objection on that ground." The rule was refused.

The plain and simple answer to all objection to the deed on the stamp laws, was, that the case of a conveyance upon sale by several persons, of different properties at separate and distinct prices, is specially provided for; it being declared, by a note under the head CONVEYANCE in the schedule to the 55 Geo. III. c. 184, that the *ad valorem* duty shall be charged on the aggregate amount of the purchase money. The objection at the trial, that there was only one deed stamp, was, no doubt, the same as that urged on the mo-

(*a*) 18 L. J. R. (N. S.), Exch. 384; 4 Exch. Rep. 193.

tion; *viz.*, that the *ad valorem* duty was calculated on the gross amount of the purchase money, instead of that paid to each vendor; such duty being, it is presumed, less than the total amount that would have been payable if computed on the separate sums. If, however, there had been no such provision, the objection would have been groundless; for whatever the facts might have been, the deed would appear to be a conveyance by three persons of property at one sum, and, being upon a sale, and the duty being charged, in all such cases, upon the consideration *expressed* in the deed, no other duty could have been assessed than that which was impressed upon it; and the omission to state facts truly, leaves no ground for objection to a deed, in reference to the stamp laws. But a doctrine would appear to be inculcated by the judgment which is opposed to all the authorities; and it would not be right to allow it to pass without remark. The stamp laws do not in any way interfere with the forms of conveyancing; but the duty yields and adapts itself to whatever mode is pursued; it is quite true, therefore, that, so far as these laws are concerned, there is no objection to any number of persons conveying, by one instrument, distinct properties; but it is also certain that, there being no community of interest, a stamp duty is payable in respect of each transaction; and, in the case of a sale at separate prices, an *ad valorem* duty would be chargeable on each sum, but for the particular direction before alluded to. At the same time it is to be observed that such duty is not to depend upon extrinsic evidence; the duty being, as already stated, charged on the consideration *expressed* in the conveyance. No reference was made by the counsel, or the Court, to this general enactment, any more than to the special one applicable to cases of several persons conveying upon sale, by one deed, different properties, under separate contracts; and the terms of the judgment—formed, it would seem, upon the facts of the case as proved upon the trial—appear to suggest that any number of persons possessing distinct properties or interests, may deal therewith by means of one instrument without incurring a separate charge of stamp duty. The case, however, must not be referred to as an authority for establishing or supporting any such proposition.

Copyhold Estates.

THE alterations under this head are the reduction of duty in two instances, viz., on ADMITTANCES *upon sale or mortgage*, by the 13 & 14 Vict. c. 97, and on LICENCES TO DEMISE by the 17 & 18 Vict. c. 83.

Admittance on sale or mortgage.

Covenant.

THE charging of a deed of covenant, *eo nomine*, with a specific duty, is, altogether, new. This has been done, by the 13 & 14 Vict. c. 97, in two instances, viz. :—

First,—Where, on a sale or mortgage, a separate deed is executed, containing any of the usual covenants by the vendor, a duty of 10*s*. is imposed; but where the duty on the conveyance, whether on sale or mortgage, is less than 10*s*., then the lesser duty is payable.

Secondly,—A deed containing a covenant for the payment of money, or the transfer or re-transfer of stock, where, in any case, a mortgage, or where, in the case of an annuity, a bond, for the like purpose, would be chargeable with *ad valorem* duty exceeding 1*l*. 15*s*., is made liable to the same duty as such mortgage or bond would be subject to.

The first is one of relief; the other is an increased charge, created with the view, for the most part, to prevent evasions of duty, in having recourse to deeds of covenant in lieu of bonds for securing sums of large amount. But it extends to any case of a covenant to pay money, where a mortgage, or an annuity bond, if given for the like purpose, would be chargeable with *ad valorem* duty exceeding 1*l*. 15*s*., such covenant not being made as a further security for money already secured by a bond or mortgage, on which such duty has been paid; and not being contained in a deed itself chargeable with *ad valorem* duty as a mortgage or set-

tlement. A deed containing a covenant, answering to this description, remains liable to the ordinary duty of 1*l.* 15*s.*, under the 55 Geo. III. c. 184, in every case where such *ad valorem* duty does not exceed that amount.

Drawback.

THE duties on debentures or certificates for receiving drawbacks are reduced in certain cases, by the 16 & 17 Vict. c. 59. See TABLE.

Duplicate or Counterpart.

A DUPLICATE or counterpart of any deed, or instrument, is charged with a maximum duty of 5*s.*, and progressive duties of 2*s.* 6*d.*; the same amount of duty, including the progressive duty, as on the original being imposed where, exclusive of progressive duty, it is less than 5*s.*; that is to say, if an instrument be chargeable with a duty of 2*s.* 6*d.*, and a progressive duty of 2*s.* 6*d.*, the duplicate or counterpart is liable, likewise, in the aggregate to 5*s.*; if the original be chargeable with 5*s.*, and, also, with 5*s.* progressive duty, or with any higher amount, the duty on the duplicate or counterpart will be 5*s.*, and the progressive duty, 2*s.* 6*d.* It is material, however, to note, that, in this case, the duplicate or counterpart, so chargeable with the duty of 5*s.*, must be impressed with a denoting stamp, to signify that the full and proper duty has been paid on the original.

The omission in the 16 & 17 Vict. c. 63, to make provision for charging these duties on duplicates and counterparts of conveyances upon which duties were imposed by that Act is supplied by the 17 & 18 Vict. c. 83, s. 15.

This provision, as to the denoting stamp, the propriety of which, more particularly in the instance of duplicates, is obvious, of necessity occasions some practical inconvenience; involving, as it does, the production of the two instruments at the Stamp Office after

execution; which it may, perhaps, be, in some cases, considered worth while to avoid, by stamping each as an original. It has been suggested, however, that this will not obviate the difficulty; the provision alluded to being, in its terms, peremptory; rendering it compulsory, in every case where the duty on the original is 5*s*. or upwards (not including any progressive duty), to have the denoting stamp on the duplicate or counterpart. That this was not the intention of the enactment is certain; nor, it is apprehended, can it be the legal effect of it. The object was to prevent fraud by the use of an instrument impressed with a stamp of low value in the place of one requiring, probably, a large amount of duty, which might never have had any existence; representing the former to be a duplicate or counterpart; and, thus, evade the duty chargeable in respect of the transaction effected. But no such evasion can take place where the instrument, whether original or otherwise, is stamped with the full duty, as an original. At all events, the difficulty can only arise in the case of a counterpart. Where both are executed and stamped, as originals, it cannot be objected that one is a duplicate. The denoting stamp will not, however, be withheld, in any such case, if it be required.

The great inconvenience that attended the regulation respecting the denoting stamp on counterparts of leases has been removed by the 16 & 17 Vict. c. 59; by sect. 12 of which it is provided that the counterpart of a lease, being duly stamped with the duty of 5*s*., or any higher duty (exclusive of progressive duty), and not executed by or on behalf of any lessor or grantor shall be available, as a counterpart, without the denoting stamp.

Instruments.

Parol evidence where document inadmissible for want of stamp.

To the list of cases referred to in the former part of the Treatise (*a*) as to the inadmissibility of parol evidence of the matters contained in documents not receivable for want of being stamped, may be added that of *Smith* v. *Yorke*, 16 Jur. 63; 21 L. J. R. (N. S.), Q. B. 53.

Award not void by reason of an agreement to admit unstamped documents, unless any such were read.

In an award was the recital of a clause contained in the submission, providing that documents should be admitted in evidence, "without reference to or requiring stamps." It was objected to the award that the provision was illegal and void, as contrary to public policy, and that the award also was void; that it must be presumed that the arbitrator acted upon it The Court was of opinion that, assuming the objection to the clause to be good, there was no ground for objecting to the award, as it did not appear that any unstamped document was admitted in evidence (*b*).

Foreign revenue laws not noticed here.

Foreign Stamp Laws.—In the first division of the chapter in the former part of the work, intituled "Instruments," the question is discussed of the admissibility in evidence in the courts of law here, of instruments made in foreign countries, and liable to stamp duty by the laws of those countries, but not stamped; and it is stated, as a settled point, or so considered, that no country takes notice of the revenue laws of a foreign state; at the same time cases were referred to (*c*), in which foreign documents, not stamped according to the laws of the country in which they were made, had been rejected. A distinction, however, is to be drawn between instruments inadmissible for want of a stamp, and those that are void for the same deficiency. This distinction was noticed in the case of *Bristow* v. *Secqueville* (*d*), in which two receipts, given at Cologne, objected to for want of stamps, to which it was attempted to be proved that they were liable by the law there, were held to be properly receivable in evidence, even admitting the foreign law to be established as insisted upon. Mr. Baron *Rolfe* made the following remark:—"I wish to observe that the marginal note

(*a*) *Ante*, page 318.

(*b*) *Phillips* v. *Higgins*, 20 L. J. R. (N. S.), Q. B. 357.

(*c*) *Alves* v. *Hodgson*, 7 T. R. 241; *Clegg* v. *Levy*, 3 Camp. 166.

(*d*) 19 L. J. R. (N. S.), Exch. 289; 5 Exch. Rep. 275.

in *Alves* v. *Hodgson* is quite correct, 'that the plaintiff cannot recover upon a written contract made in Jamaica, which by the laws of that island was *void* for want of a stamp;' and I think there must be some error in the report. If it means that the document was only inadmissible for want of a stamp, and, therefore, was inadmissible here, I entirely disagree. If the contract is void, that is, no contract at all in the place where it was made, then it could not be sued on anywhere."

Agreement for sale of a building contract, vendor bound to hand over the contract stamped.

UNSTAMPED INSTRUMENTS.—A bill was filed for the specific performance of a contract for the sale of property, subject to an agreement for a building lease, which agreement, it was admitted, was the real subject of the contract. The agreement was not stamped, and the purchaser required that the vendor should hand it over duly stamped, which Vice-Chancellor *Stewart* was of opinion ought to be done; and, in decreeing for a specific performance, he observed that, if the parties could not come to an understanding, he must declare that the defendant was bound to deliver the agreement as a valid and binding instrument (*e*).

Unstamped agreement for a race admitted to show fraud.

ADMITTED TO PROVE FRAUD.—In an action against a stakeholder in a trotting match by the person whose horse was beaten, on the ground that he had been induced by fraud to enter into the wager, the horse represented by one name being in reality another horse, it was held that the articles of agreement formed part of the fraud, and, on the authority of *Reg.* v. *Gompertz*, were, although unstamped, admissible to shew the fraud (*f*).

Post-dated cheque.

See also what was said in *Watson* v. *Poulson* (*g*), as to a post-dated cheque being admissible for a like purpose.

Secondary evidence. A judge at chambers cannot preclude a party from producing an unstamped document to defeat his opponent, who is prepared with a stamped copy

ADMITTED AS SECONDARY EVIDENCE.—In the division III. of the same Chapter, relating to the admission of unstamped documents as secondary evidence, it is shown that the cases establish the proposition that where a writing liable to stamp duty, is lost, evidence cannot be given of its contents if it be proved to be unstamped; but that, in the case of *Bousfield* v. *Godfrey* (*h*), where the defendant having surreptitiously obtained possession of an agreement between himself and the plaintiff, and having alleged that he had lost it, the Court made an order, that if, on the trial, the plaintiff produced a copy (which had been handed over to him), duly stamped, the defendant should not be permitted to produce the original; this order being made on a motion to set aside a simi-

(*e*) *Smith* v. *Wyley*, 16 Jur. 1136.
(*f*) *Holmes* v. *Sixsmith*, 21 L. J. R. (N. S.), Exch. 312; 7 Exch. Rep. 802; 16 Jur. 619.
(*g*) 15 Jur. 1111
(*h*) 5 Bing. 418.

lar one made by a judge at chambers; and which also directed the defendant to deliver a copy (of a copy admitted to be in his possession) to the plaintiff. In a recent case, however (*i*), where Mr. Justice *Erle*, at chambers, made an order that the defendant should produce an award to be stamped; or that, if the plaintiff produced a stamped copy at the trial, the defendant should not produce the original, or object that it had not been stamped, the Court of Queen's Bench made absolute a rule obtained for discharging the order, and also the one making it a rule of Court; considering that a judge could not make an order precluding a party from using or requiring legal evidence.

Mr. Justice *Coleridge*, who delivered the judgment, observed, that it was probable, that if the plaintiff had applied at the proper season, the Court might have exerted its inherent power of modifying the record, and shaping the issues, so as to compel the trial of the question, fairly, according to the justice of the case; it might have prevented the defendant from pleading *nul agard*, unless he would consent to produce the original award, and suffer it to be stamped, or agree to such equitable terms as would let in the only proof which his fraudulent conduct left in the power of the plaintiff; but that it was of great importance to abstain from all interference with the regular course of proceeding and rules of evidence at *nisi prius*. *Bousfield* v. *Godfrey* stood alone; the objection, to which the decision in it was open, on principle, did not seem to have been considered, and its authority was much shaken by what was said both by Lord *Lyndhurst* and Mr. Baron *Bayley* in *Travis* v. *Collins* (*k*). It was material, also, to note, that, in that case, (*Bousfield* v. *Godfrey*) the jurisdiction of the Court was in a great measure assumed; the argument turning, mainly, on the effect of the Stamp Acts.

In the present case, the trial had taken place; and the defendant, disregarding the order, objected to the reception of a stamped copy, on the ground that the original had not been stamped; which objection, however, was overruled by Lord *Denman*, who tried the cause; and the copy having been admitted, a verdict passed for the plaintiff. A bill of exceptions was, thereupon, tendered, which had not been disposed of.

ALTERATION.—A debenture was issued by a joint stock company in the following form; viz.: "On the 15th July, 1850, the Governor and Company of Copper Miners in England, promise to

(*i*) *Bankin* v. *Hamilton*, 14 Jur. 930; 15 A. & E. (N. S.), 187.

(*k*) 2 Cr. & J. 625.

pay to [ ] at &c., the sum of 500*l* value received; and further to pay the holder of the warrants annexed on presentment thereof as they shall fall due, interest on the said sum at 5*l.* *per cent.*" After it was issued the plaintiff in error inserted in the space left, the words "*H J Enthoven, Esq.*, or order," and indorsed it to the defendants in error. It was held to be void by reason of the alteration (*l*).

Erasure of name of shareholder in deed of settlement.

In an action of debt for calls, on proving the execution of the deed of settlement by the defendant merely to show him to be a shareholder, there appeared an erasure of the name of a person who had signed the deed before the defendant, a line being drawn through it, the witness saying that he believed the name stood there without erasure when the deed was executed by the defendant; the Court held the deed evidence of the defendant being a shareholder, and that the erasure of the name of another shareholder, rightfully or wrongfully, could not divest from the defendant the shares which he before held. There was no ground for saying that the deed was void from the beginning; it might still be given in evidence to prove a right or title created by its having been executed, or to prove a collateral fact. This action was not upon the deed (*m*)

See *ante*, page 370, upon this latter point.

Jury to say when erasure was made

It is a question for a jury, whether an erasure was made before execution or not (*n*)

A deed admitted under a Judge's order cannot be objected to on account of any alteration in it.

Where a deed is admitted in evidence under a Judge's order, no objection to it, by reason of an alteration in a material part, not noticed in the attestation, can be taken at the trial. The party called upon to admit may, first, inspect the deed, and he may refuse to admit it if he thinks the alteration was made after execution, and, so, leave his opponent to prove it; his consent to admit it is not consistent with his obliging the other party to produce evidence in support of it (*o*)

(*l*) *Enthoven* v *Hoyle*, 21, L J. R. (N. S.), C P. 100; 16 Jur. 272.

(*m*) *Agricultural Cattle Insurance Company* v *Fitzgerald*, 20 L. J. R (N. S.), Q B 244; 15 Jur. 489

(*n*) *Doe dem Tatham* v *Calamore*, 20 L. J. R (N. S.), Q. B. 364; 15 Jur. 728

(*o*) *Freeman* v. *Steggel*, 13 Jur. 1030; 14 A. & E. (N. S.) 202.

Insurance.

NEW duties on policies of life assurance are imposed by the 16 & 17 Vict. c. 59 (see TABLE, tit. "POLICY"); and stamped policies are required to be made out within a month, under a penalty of 50*l.* By the 16 & 17 Vict. c. 63, the Commissioners are authorized to issue adhesive stamps for life policies.

Provision is made, by the 13 & 14 Vict. c. 97, to remedy the inconvenience attending the granting of annual licences to insure against *fire* in Ireland, by authorizing the issuing of permanent licences, as in England

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SEA POLICY.—By the 35 Geo. III. c. 63, s. 11, relating to Sea Insurances, it is required that, amongst other things, the names of the subscribers shall be expressed in or upon the policy; that, in default, the insurance shall be void. At the time of the passing of this Act it was not competent for any partnership firms, except the London Assurance and the Royal Exchange Assurance Companies, to become assurers; but the prohibition was repealed by the 5 Geo IV. c. 114, and, in the case of a public company, it is to be deemed a compliance with the former Act if the name of the company be inserted in the policy (*p*)

Lease.

THE *ad valorem* duties on leases are very considerably reduced, by the 13 & 14 Vict. c. 97, in ordinary cases;—the rate being 10*s* *per cent* on the rent. But by the 17 & 18 Vict. c. 83, they have been increased to 3*l.* *per cent.* where the term exceeds thirty-five and does not exceed one hundred years; and to 6*l.* *per cent.* where it exceeds one hundred years

Lease of mines. In leases of mines, where any portion of the produce is reserved, in money or kind, the minimum or the maximum of which, as the case may be, is specified, duty is charged under the former Act (to which the following provisions all refer) on such minimum or maximum, as well as on any yearly sum that may be reserved, by way of surface rent, or otherwise.

(*p*) *Reid* v. *Allan*, 19 L. J. R. (N. S.), Exch. 39; 4 Exch Rep. 326; *Dowdall* v. *Allan*, 19 L J. R. (N. S.), Q B. 41.

Leases, where the rent, or fine, consists of corn, &c., are chargeable with *ad valorem* duty in the manner pointed out. See TABLE. Corn rent.

And it is provided that where leases are granted by persons having joint or several interests in the same property, in consideration of separate and distinct fines, or reserving separate rents, the duty shall be calculated on the aggregate of such fines or rents. Leases by joint tenants, &c.

In the case of a lease granted, at the instance of a person having a contract for a lease, to a third person who has purchased the interest of such intermediate party, it is required that the purchase-money paid to the latter shall be set forth, and that the lease shall be charged with the *ad valorem* conveyance duty on such purchase-money, as well as with that on the rent. Leases to the purchaser of intermediate interest.

This clause was prepared long previously, in order to restore the proper practice, which had been interfered with by the unintelligible case of *Boone* v. *Mitchell* (*q*). It may be said, however, to have been in a measure unnecessary, since the decision in *The Attorney-General* v. *Brown* (*r*) had shown that the former case, as reported, was altogether erroneous.

An indemnity is provided in respect of leases made before the 20th March, 1850, but not in conformity with the law as settled by this latter case (*s*); which confirms the view, that the clause, declaring that the *ad valorem* conveyance duty shall be payable in such cases, was, in point of law, not required. The leases themselves not being affected by the irregularity, there was no necessity for the provision which is made respecting them. Indemnity in such cases for past transactions.

A lease granted in consideration of the surrender of an existing lease, *and* a sum of money, is to be chargeable only with the *ad valorem* duty on such sum. This will be found as a proviso under the head "LEASE" in the TABLE. Lease in consideration of a surrender of a former one and of money.

COUNTERPARTS or DUPLICATES of leases are charged, like those of other deeds, with the same duties as the originals, but not exceeding, in any case, 5*s*., with progressive duties of 2*s*. 6*d*. See "DUPLICATE or COUNTERPART," *ante*, and in the TABLE. Counterparts.

ASSIGNMENTS and SURRENDERS of Leases, not upon sale or mortgage, are charged with the same duty as the leases themselves would be, under this Act; but not exceeding 1*l*. 15*s*. This provision applies as well to the case of an assignment of a lease granted before the coming of the Act into operation, as to that of one Assignments and surrenders.

(*q*) 1 B. & C. 18; see also *ante*, p. 228.

(*r*) 18 L. J. R. (N. S.), Exch. 336; 3 Exch. Rep. 662.

(*s*) See *ante*, p. 877.

granted subsequently thereto; so that the assignment, not being upon sale or mortgage, of an old lease, will be chargeable with the same duty as would have been payable on the lease itself, under the new Act.

LEASE *for a Year*.—See BARGAIN and SALE.

LEASES in IRELAND are now charged precisely the same as in England, the duties imposed, specifically, by 5 & 6 Vict. c. 82, and the 9 & 10 Vict. c. 112, being repealed; and see *ante*, page 876, as to certain agreements made previously to the 13 & 14 Vict. c. 97, for letting lands in Ireland, where the rent does not exceed 50*l.*, and the premium 200*l.*, which are to be deemed sufficiently stamped if impressed with the duty of 2*s.* 6*d.*

Agreement to hire premises.

In an action of assumpsit, for use and occupation, an instrument, signed by the defendants, and a copy of which was signed by the plaintiff, to the following effect, was held to be admissible without a lease stamp, *viz.*:

"We hereby agree to hire your cottages and premises known, &c., from 27th Sept. next, at the rent of 40*l.* *per annum*, payable quarterly, free from all deductions; and agree to pay 10*l.* on the 30th October." It then went on to provide for giving up possession, in case of the rent being in arrear, on notice, without the aid of legal authority, and without prejudice to any remedy for enforcing payment of the rent; and contained an engagement to preserve the premises from damage, and deliver them up in good condition. In the course of the argument, on moving for a rule on various grounds, the question as to the stamp was decided; Mr. Baron *Parke* observing, that, assuming the paper, which was signed by both the defendants, to be signed by the plaintiff also, there was nothing to stamp as a lease. It was merely an agreement, which, except for the Statute of Frauds, need not be in writing (*t*).

This scarcely seems to be satisfactory. The terms of entry and holding appear to be sufficiently certain to justify the instrument being construed a demise: and there is nothing executory in it. It was, indeed, on showing cause, made part of the plaintiff's case, that it operated as a present demise; and, so far as the Statute of Frauds was concerned, no writing was absolutely necessary; a parol lease, not exceeding three years, being good in law. If, therefore, this instrument was, in its terms, a demise, it was, in point of law a lease, and should have been stamped accordingly.

(*t*) *Glen* v. *Dungey and another*, 4 Exch. Rep. 61.

Not being a lease, required by law to be in writing, it was not requisite that it should, by reference to the 8 & 9 Vict. c. 106, be a deed to constitute it a valid lease.

On hearing an appeal against an order of removal, the following facts appeared:—

Acceptance of proposal for lease not made known to tenant.

The pauper's husband, *Lings*, had for some years occupied a house, the property of Sir *Richard Sutton*. In 1844 he delivered to the agent a proposal for taking a lease, on certain terms. The agent accepted him as a tenant. In 1845 Sir *Richard's* surveyor made a report of the particulars; adding a memorandum, that the proposal should be accepted; which report Sir *Richard* subscribed "examined and approved," by way of instruction to his agent. This was never shown to *Lings;* but a draft lease was sent to him for perusal, which he never returned. No stamp was on any of the writings.

The Court of Queen's Bench, on a case stated, said:—"The proposal was never, in fact, accepted; and, therefore, the question does not arise whether a written proposal afterwards accepted may so far become a contract as to require a stamp. The words of the Stamp Act are not to be so construed as to exclude every unstamped document that may be used towards proof of a contract; and this document was not, of itself, either a contract, or a minute, or memorandum of a contract, so as to require a stamp. The tenant might at any time have withdrawn, for the acceptance of the lease was never communicated to him. *Doe* v. *Frankis* is distinguishable" (*u*).

Agreement to reduce rent not a new demise.

An agreement was made for letting a house at 20*s*. a week. During the occupation, the landlord agreed to accept 16*s*. a week. Held to be no new demise (*x*).

Fresh arrangement as to payment of rent, a new demise.

Under an agreement to let certain premises, at 145*l*. a year, the tenant took possession of all, except a cottage in the occupation of an under-tenant, whom he could not prevail upon to leave. It was subsequently agreed, between the landlord and the tenant, that the former should receive from the under-tenant the rent due for the cottage, and that it should be deducted from the year's rent of the whole, and the remainder paid at the two stated periods originally agreed upon for payment of the respective moieties of the entire year's rent. This was held to be a new demise, and that the landlord was entitled to distrain for the first 70*l*. (*y*).

(*u*) *Reg.* v. *St. James, Westminster*, 16 Jus. Peace, 84.

(*x*) *Crowley* v. *Vitty*, 7 Exch. Rep. 319.

(*y*) *Watson* v. *Waud*, 8 Exch. 335.

In debt for rent, counterpart of lease admitted to prove demise.

In an action of debt for rent the plaintiff declared on the indenture of demise, excusing the production of the same as being in the possession of the defendant, and making profert of the counterpart executed by him. Plea, *non est factum*. It was objected that until an original was shown to exist nothing professing to be a counterpart could be read; it must be considered as an original, chargeable with stamp duty as a lease. The Judge admitted it. On motion, the Court was of opinion that there was sufficient to raise a presumption that there was an original lease, duly stamped, of which the instrument produced was a counterpart (*z*).

Letters Patent.

BY the 15 & 16 Vict. c. 83, the duty of 5*l.* on a specification of invention for obtaining a patent is repealed, and other duties are granted, for which see the TABLE, tit. "PATENT."

Memorial.

THE duty on a memorial for registering a deed has been reduced by the 13 & 14 Vict. c. 97 from 10*s.* to 2*s.* 6*d.* for every piece of parchment, &c.; but a memorial for registering or enrolling a grant of an annuity remains chargeable with the same duty as before.

Mortgage.

UNDER this head important alterations have been made by the 13 & 14 Vict. c. 97.

New duties.

As in the case of bonds, the *ad valorem* duty, which is a percentage of low amount, does not stop, as previously, at 25*l.*, or at any other amount, but increases with that of the money secured,

(*z*) *Hughes* v. *Clark*, 10 C. B. Rep. 905; 15 Jur. 430.

ad infinitum; and where the amount secured is without limit, the charge is available only for so much as the stamp duty will extend to cover. In cases of mortgages made for securing money to be afterwards advanced, or to become due, without limit, therefore, they may be made available at any time, for any amount, by getting a corresponding amount of stamp duty impressed, which may be done on payment of a penalty; but in such cases the Commissioners cannot impress any adjudication stamp.

Mortgage without limit.

Where the transfer of stock of *any company or corporation* is secured, the *ad valorem* duty is payable; it was charged, before, only on stock of the Bank of England, or Ireland, or of the East India, or South Sea Company.

To secure transfer of stock.

Where money advanced, by way of loan, is secured to be repaid in the shape of an annuity or rent-charge, *ad valorem* duty is payable on the amount so advanced. This was not, previously, the case. Where the instrument was made as a security for the payment of money then due and owing, *ad valorem* duty was charged only in case the amount to be repaid was definite and certain; that is to say, it was charged, specifically, on the amount *secured*, not on that advanced. As an instance in which the present provision applies, may be mentioned that of advances made under the Private Drainage Act, 12 & 13 Vict. c. 100 (*a*).

Money secured by rent-charge.

Acceptable alterations will be found in regard to transfers of mortgages, and to instruments of further assurance, or further security.

Transfers of mortgage. Further assurance, or further security.

TRANSFER OF MORTGAGE.—The inconveniences for a long

(*a*) This clause has been characterized as obscure; and as seeming to treat the purchase of an annuity, for a pecuniary consideration, as a loan, to be repaid by the annuity; observing that the grant of an annuity, under such circumstances, was liable to *ad valorem* duty as a mortgage. It is also remarked, in allusion, no doubt, to the application of the enactment as mentioned in a former edition of this Supplement, that if referring, exclusively, to annuities for terms of years under the Private Drainage Act, it is both oddly expressed, and superfluous, securities for such annuities being clearly mortgages. There is no doubt that the framer of the clause had these securities in his mind, and has provided for them. It is not, certainly, so perfectly clear that they are mortgages upon which *ad valorem* duty attached under the former law; it is understood that they were, in fact, treated as purchases of annuities, and stamped with *ad valorem* duty as conveyances. This difficulty, whether to regard the transaction as a sale or a mortgage, is indeed suggested by the observations alluded to. It must be admitted that the advances in question are within the present provision, which is spoken of as describing the case of a purchase of an annuity; and yet it is said that such advances are clearly mortgages. It was right to remove the doubt. It will be noticed, that the cases provided for are those of *money advanced by way of loan, to be repaid.*

time existing in consequence of the unsettled state of the law relating to transfers of mortgages, and the grievances which a more definite condition imposed, are dwelt upon in the first part of this work. It will be well to glance at them here, the better to point out the difference between the late and the present law, and to impress the state of the latter.

The following propositions were laid down, as the result of the decisions in various cases (*b*).

Former propositions.

1. A transfer of mortgage where a further sum was advanced, the covenant for payment being limited to such sum and interest, was chargeable with no other duty than the *ad valorem* duty on the further advance, and progressive duties of 20*s.* each (*c*).

2. In the case of a transfer of mortgage, where no additional sum was advanced, but a further *security*, or something in the nature of it, was given for the money due; whether such security, or *quasi* security, consisted of other property or of an enlarged estate in the same property, or of a power of sale not in the original mortgage, or a mere covenant by the mortgagor, or other person, with the transferee for payment of the money, the duties payable were,—1*l.* 15*s.* in respect of the transfer, the like for the further security, and progressive duties of 1*l.* 5*s.* each.

3. Where a further sum was advanced, whether on the occasion of a transfer or not, and additional security was given, as in the last proposition, the proper stamps were stated to be,—the *ad valorem* duty on the further sum, and a common deed duty of 1*l.* 15*s.* in respect of the additional security, with progressive duties of 1*l.* each (*d*).

These duties, in any of such cases, were independent of any duty that might attach in lieu of that as for a bargain and sale or lease for a year, where the effect of a lease and release was required to be given to the deed.

New Duties.

The present duties, besides progressive duties, are as follows, *viz.*:—

A transfer of mortgage with a further advance is chargeable, only, with the *ad valorem* duty on the additional sum, thus adopting, as a principle, the decision in *Doe* v. *Gray*.

A transfer, without a further advance, is liable to a maximum

(*b*) *Ante*, p. 483.

(*c*) *Doe* v. *Gray*, 3 Ad. & E. 89; 1 H. & W. 235; *Doe* v. *Roe*, 4 Bing. N. C. 737; 1 Arn. 279.

(*d*) *Lant* v. *Peace*, 8 Ad. & E. 248; W. W. & H. 271; *Brown* v. *Pegg*, 13 L. J. R. (N. S.), Q. B. 270; 8 Jur. 955; 6 Ad. & E. 1; *Humberstone* v. *Jones*, 11 Jur. 337; 16 L. J. R. (N.S.), Exch. 292; 16 M. & W. 763; *Doe* v. *Gutteridge*, 12 Jur. 51; 17 L. J. R. (N. S.), Q. B. 99.

duty of 1*l.* 15*s.*; but where the money already secured does not exceed 1400*l.*, the *ad valorem* duty thereon is payable in lieu, such *ad valorem* duty being, in all cases, less than 1*l.* 15*s.*

No instrument of transfer is to be chargeable with any further duty than before mentioned by reason of its containing any additional security for the money or stock due, or any covenant, proviso, power, stipulation, or agreement, or other matter whatever, in relation to such money or stock.

Thus it will be seen that the cases of *Lant* v. *Peace*, *Brown* v. *Pegg*, *Humberstone* v. *Jones*, and *Doe* v. *Gutteridge*, have no effect whatever, in reference to deeds chargeable with stamp duty under the present Act. And it is important to note that, in this respect, the law is made retrospective (see *ante*, p. 877).

Further Assurance and Further Security.—These instruments are chargeable also with a maximum duty of 1*l.* 15*s.*; but where the amount of the money secured does not exceed 1400*l.*, then only with the *ad valorem* duty on such amount.

And it is provided that where, in any such case of further assurance, on further security, either by the mortgagor, or by any person entitled to the property by descent, devise, or bequest from him, any further money is advanced, then the only duty payable (except progressive duty) shall be the *ad valorem* duty on such further money; notwithstanding the deed may contain any covenant, by the mortgagor, or such other person, proviso, power, stipulation, or agreement, or other matter in relation to the money secured. This is also retrospective (see *ante*, p. 877).

Assignment of judgment debt, or policy of assurance as a security.

The case of *Warren* v. *Howe* (*a*), in which it was held that a judgment debt was not *property* within the meaning of the Stamp Act, so as to subject a transfer of it, by way of sale or mortgage, to *ad valorem* duty, has been the subject of much controversy in the profession; and the Writer has taken occasion, in the former part of this work, under the head of Conveyance, as well as Mortgage, to question the propriety of the decision; the point, however, is no longer one of doubt. In *Caldwell* v. *Dawson* (*f*), a question was raised whether an assignment by way of mortgage, for securing 700*l.*, of a policy of assurance on a life, was sufficiently stamped, having upon it only the common deed stamp of 1*l.* 15*s.*, and not an

(*e*) 2 B. & C. 281. (*f*) 14 Jur. 316; 5 Exch. Rep. 1.

ad valorem mortgage duty of 5*l.* The Court held that it clearly was not; and although neither of the learned judges, in express terms, says that *Warren* v. *Howe* is overruled by their decision, it is impossible that a difference of opinion can exist as to the effect of such decision upon the prior judgment. Mr. Baron *Parke* considered that the question had not been judicially decided, and that they were not concluded by any former decision; referring as well to the case of *Blandy* v. *Herbert* (*g*), as to that of *Warren* v. *Howe*; he states, clearly, however, his opinion that the language of the Stamp Act, viz., "mortgage of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever," affected *every description of property*, and, on all such conveyances, imposed a mortgage stamp.

Mr. Baron *Alderson* observed, that whether the opinion given by Lord *Tenterden* in *Warren* v. *Howe* was correct or not, was not the question before them; although it was difficult so to consider it, He thought that the words of the schedule to the Stamp Act were not to be so strictly construed as to extend only to such property as could be transferred, at law, from a seller to a purchaser. A policy of assurance was "property" in the ordinary sense of the term.

Mr. Baron *Rolfe* was of the same opinion; concluding his remarks by owning, that if ever he should be the purchaser of a judgment debt, or of a policy of assurance, he should insist on an *ad valorem* stamp.

It is satisfactory to find that the question has been so well and carefully considered, and that opinions have been so unequivocally expressed; although, in all probability, the judgment will not be advantageous to the revenue, since the *ad valorem* duties on mortgages are now so greatly reduced.

Premiums on life policy not chargeable where not debts.

A mortgage (under the 55 Geo. III. c. 184,) of certain goods and a policy of insurance on a life was made to secure 184*l.* 7*s.* 6*d.*, with leave to the mortgagee to pay the premiums on the policy, the sums so paid to be considered as principal moneys and bear interest. The deed was stamped for 184*l.* 7*s.* 6*d.* only, but it was contended that it ought to have been stamped as for securing future payments of unlimited amount. The Court said that if the charge had been confined to the policy, the principle *expressio eorum quæ tacite insunt nihil operatur* would have applied; but it was not so confined. But, though not so, they did not think that on a proper construction of the whole deed this charge, when paid by the

(*g*) 9 B. & C. 396.

mortgagee, became a *debt* due from the mortgagor; the covenant to pay was confined to the 184*l.* 7*s.* 6*d* (*h*).

See the case of *Wroughton* v. *Turtle*, *ante*, p. 464, as to the necessity for future payments becoming debts due from the mortgagor to render them liable to duty. And see also *Dobson* v. *Land* (*i*), in reference to the principle alluded to; in which Vice-Chancellor *Wigram* held, that a mortgagee had no right, without a special contract, to charge in account against the mortgagor the premiums paid for insurance.

This decision in *Lawrence* v. *Boston*, tends to confirm the view the Court took in the above case of *Warren* v. *Howe*, as to the mortgage of a policy of insurance.

Mortgage to indemnify surety chargeable.

A mortgage to indemnify a surety who had given bond for the mortgagor, is a mortgage for securing the repayment of money to be thereafter paid, and requires an *ad valorem* stamp (*k*).

Newspapers.

THE much contested point, whether a paper containing news, published at intervals exceeding twenty-six days, was a newspaper chargeable with stamp duty, it is not now necessary to advert to; since the Legislature has thought proper to render needless any further discussion relating to it, and prevent all question in future upon the subject, by passing an Act (*l*), repealing the third definition of a newspaper in the 6 & 7 Will. IV. c. 76, which created the difficulty, and providing that no paper containing public news shall be deemed to be a newspaper within any Act relating to the Stamp Duties on newspapers, unless the same shall be published periodically, or in parts or numbers, at intervals not exceeding twenty-six days.

By the 16 & 17 Vict. c. 63, other alterations have been made respecting newspapers, by allowing them to be printed on paper of larger dimensions than before, and with unstamped supplements in certain cases. See TABLE, title "NEWSPAPERS."

(*h*) *Lawrence* v. *Boston*, 21 L. J. R. (N. S.), Exch. 49; 7 Exch. Rep. 28.

(*i*) 8 Hare, 216; 19 L. J. R. N. S.), Chan. 484.

(*k*) *Lord Canning* v. *Raper*, 22 L. J. R. (N. S.), Q. B. 87; 1 El. & B. (Q. B.) 164; 17 Jur. 390.

(*l*) 16 & 17 Vict. c. 71.

Progressive Duty.

A radical alteration in the duties under this head is effected, and all inconsistency obviated. By the law as it existed before the 13 & 14 Vict. c. 97, a deed, liable to *ad valorem* duty, as the principal charge, of 10*s*. only, was subject to a progressive duty of 20*s*. Under that Act the highest progressive duty is 10*s*.; and where the primary or principal duty is less than 10*s*., the progressive duty is the same amount. A progressive duty is, specially, charged on particular instruments, in some instances; in others, reference is made to the head "PROGRESSIVE DUTY," where it is charged in all cases not specifically provided for.

Progressive duties are not to be deemed to attach on an instrument in respect of any former instrument, duly stamped, which is made part of the subsequent instrument by being annexed to it. See *ante*, page 877.

Second agreement indorsed on a former one.

This latter provision is retrospective; but no allusion appears to have been made to it in the case of *The Fishmongers' Company* v. *Dimsdale* (*m*), which was as follows:—An agreement duly stamped with 1*l*. 15*s*., was entered into. Some weeks afterwards a memorandum was indorsed upon it, containing certain explanations and further stipulations, amounting to a separate contract. This was stamped with 20*s*., sufficient in regard to the quantity of words it contained; but it was contended that, inasmuch as it referred to the original contract, and the whole together exceeded 1080 words, it ought to have been stamped with 1*l* 15*s*. under the 55 Geo. III. c. 184, the first instrument being a schedule, &c., annexed within the meaning of the Act.

The Court was of opinion that the second instrument did not incorporate the first; but that if it did there were decisions showing it to be unnecessary to count the words of the first agreement.

(*m*) 22 L. J. R. (N. S.), C. P. 44; 16 Jur. 799.

Promissory Notes.

WITH the exception of bankers' re-issuable notes, all the duties on promissory notes have been repealed by the 17 & 18 Vict. c. 83, and new ones granted in lieu; for which see TABLE. There is now no distinction between long and short dates, the duty is uniform, being at the rate of one shilling *per cent.* in all cases, except as mentioned above.

The only alteration with regard to promissory notes made by either of the Acts of 1853, is that of exempting from duty (by the 16 & 17 Vict. c. 59), bankers' accountable receipts containing an agreement to pay interest, which, previously, were chargeable as promissory notes by reason of such agreement

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Receipts.

THE recent statutes have effected considerable alterations under this head. By the 16 & 17 Vict. c. 59, the whole of the duties on receipts were repealed, and one uniform duty of a penny granted in lieu upon all receipts for money amounting to 2*l.* or upwards. By the same Act receipts for Land Tax, Assessed Taxes, and Property and Income Tax were exempted from duty, which exemption has, by the 17 & 18 Vict. c. 83, been extended to all receipts for money paid to the use of the Crown. The former Act also exempts, as stated under the head "Promissory Notes," all Bankers' accountable receipts.

The 17 & 18 Vict. c. 83, has made a further important alteration, the knowledge of which cannot be too widely extended. By the 55 Geo. III. c. 184, acknowledgments given for or upon payments made by or with bills of exchange, drafts, promissory notes or other securities for money, are to be deemed receipts for money chargeable with stamp duty. But an exemption was given in favour of "Letters by the general post, acknowledging the safe arrival of any bills of exchange, promissory notes or other securities for money." This exemption has now been repealed; the consequence is, that letters acknowledging the receipt of drafts, post office orders, letters of credit, and documents of the like kind, for the payment of money amounting to 2*l.* or upwards, must be stamped as receipts

Discount.

The discount of 7*l.* 10*s.* *per cent.* on the purchase of receipt stamps, granted by the 9 Geo. IV. c. 27 and taken away by the 12 & 13 Vict. c. 80, is restored by the 13 & 14 Vict. c. 97, s. 18.

Receipt for money on account of a bill.

In an action by the indorsee against the drawer of a bill of exchange for 9*l.* 5*s.*, accepted by one *Marks*, the defendant pleaded payment by the acceptor to the plaintiff; and the following unstamped receipt, given by the plaintiff, was tendered in evidence and admitted, *viz.*—

"*Myself* v. *Marks.*

"Mr. *Marks* has this day left with me 10*l.* on account of the debt, interest, and costs in this action.

"*E. L. Levy*, plt., in person."

A rule for a new trial was refused, the Court considering that a stamp was not necessary. Mr. Baron *Parke* observed that the document did not express that the sum of 10*l.* had been "paid, settled, balanced, or otherwise discharged or satisfied" within the words of the Stamp Act. The acceptor might have countermanded the application of the money; the plaintiff did not say that he had *received* it on account of the debt; he might have sent it back the next morning. Mr Baron *Alderson* said that the document could not be shown to be a receipt, unless there were more evidence of the money having been received by the plaintiff on account of the debt (*n*).

The Writer would be glad to be enabled to feel that this reasoning was entirely satisfactory. There is a difference between the jury and their lordships as to the effect of the document. The latter say, that it is not, of itself, evidence of a receipt of money on account of the bill; that it does not express that the amount specified has been paid, &c., within the words of the statute. On the other hand, the jury, by their verdict, say that it shows that the whole demand arising on the bill against the acceptor, the person ultimately liable to all parties, has been paid. It was given in

(*n*) *Levy* v. *Alexander*, 4 Exch. Rep. 485; 19 L. J. R. (N. S.), Exch. 113.

evidence for the sole purpose of showing that fact, and was admitted to be sufficient, and that such demand was thereby "satisfied." At all events, it would appear that the money was paid on account of a demand, and, therefore, *pro tanto*, the demand was satisfied; and so the document was, it is with deference submitted, a receipt within the terms of the Act. It is not apprehended that any difficulty is made as to the legal effect of the words "left with me." It cannot be material what words are used to express the receipt of money, on account of a demand; it cannot be said that a memorandum, given by a creditor to his debtor, that the latter has left money with him on account of his debt, is not evidence of the receipt, and, therefore, of the payment, of so much of the demand, and, *pro tanto*, a discharge; and how, in the case under observation, it was open to the acceptor, after having left with, that is, *paid*, the drawer, money on account of his demand on the bill, and which the drawer acknowledges to have received, to countermand the application of the money, any more than for the debtor, in the case suggested, is not very apparent. Mr. Baron *Parke* says that the plaintiff does not say that he has received it on account of the debt. With respectful submission, however, he says that which is equal to it; he admits that he has received it, and that it was paid by the debtor on account of the debt; and what more is necessary to show satisfaction? His lordship observes, that he might have sent it back the next morning. Might not the same be said in any case? But whether it is sent back or not, it is a memorandum of the payment of the money, and a perfectly good discharge in the meanwhile, if not at all times. If, however, it is not really a discharge, and would not (so far as the terms of it extend) be admitted as evidence of payment in an action by the creditor, *cadit quæstio*.

Memorandum of demand being discharged.

In an action of debt, for goods sold and delivered, the defendant pleaded payment, and offered in evidence the following unstamped writing, *viz.*:

"Memorandum, that any demand we may have against Mr. *George Whiting*, for iron work, &c., is this day discharged, in consideration of services rendered by him to us.—N.B. Particulars of our account shall be delivered with stamp receipt.—*James Livingston, Brothers*." The document was admitted, and a verdict returned for the defendant, with leave for the plaintiff to move to enter a verdict for himself, if the Court should be of opinion that it required a stamp.

A rule obtained, accordingly, was made absolute; Lord *Camp-*

bell observing, that the plea of payment could only have been proved, by this document, upon the supposition that, in contemplation of law, a pecuniary transaction had taken place, and money had passed, by which debts, on the one side and the other, were paid (*o*).

This decision seems open to remark, which the writer ventures upon with all possible respect. The point for their lordships' consideration was, it appears, simply, whether or not the writing was a receipt requiring a stamp; not what the effect of it was, stamped or unstamped, when offered in evidence, in reference to the plea of payment. Whether or not proof, *aliunde*, of the fact mentioned in the document, would have sustained the plea, was not a question reserved for the Court. Was the document a receipt within the meaning of the Stamp Act, or was it not? Beyond this it seems an excess of authority to go. The writing charged with stamp duty is, a "receipt or discharge given for or upon the payment of money." There does not appear to have been any pretence for saying that there was any actual payment of money in this case, or that the discharge in question was given for money. On the contrary, it was expressed upon the face of it to be given for another consideration.

Receipt and agreement.

In an action of assumpsit, for non-performance of an agreement to procure and hand over to the plaintiff a certain dishonoured bill of exchange, the following document was held admissible in evidence, stamped as an agreement, and not as a receipt, *viz.*:

"I have received your cheque for 391*l.* 10*s.* 3*d.*, being the payment of an overdue bill and interest in the hands of the Derby and Derbyshire Bank; and I hereby undertake to procure and hand the said bill over to you; and I have now given you Messrs. *Dixon's* order for 500 tons of iron."

The Court treated it as an agreement to deliver up the security; the consideration for the agreement being clearly expressed.

In the course of the argument, Mr. Baron *Parke* observed, that it was within the 11th exemption. The consideration for the agreement was the cheque; and the document was, therefore, a receipt "acknowledging the receipt of the consideration-money therein expressed:" and that it was duly "stamped according to the laws in force at the date thereof," as an agreement (*p*).

It remains to be seen whether this decision can be sustained by

(*o*) *Livingston* v. *Whiting*, 19 L. J. R. (N. S.), Q. B. 528; 15 Jur. 147; 15 A. & E. (N. S.) 722.

(*p*) *Van Dadelszene* v. *Swann*, 20 L. J. R. (N. S.), Exch. 50; 5 Exch. Rep. 825.

reference to the important case of *Matheson* v. *Ross* (*q*), in the House of Lords, which was as follows:—An action was brought for an alleged balance of an account, and, on the trial, the plaintiff tendered in evidence a paper containing a Dr. and Cr. account, showing a balance of 68*l.* 9*s.* 4*d.* in favour of the plaintiff; at the bottom of which account was the following unstamped receipt, signed by the plaintiff, *viz.*: "I acknowledge having received from *K. M.* 68*l.* 9*s.* 4*d.* sterling, being balance of pay-bills paid from 7th August to 11th December, both inclusive." The payment of the balance was not, in any way, in dispute; and the receipt was offered, not to prove payment of it, but as an acknowledgment of the state of the accounts at the time. The majority of the Judges in the Court below were against its being received; but their decision was reversed in the House of Lords. It was agreed by all their Lordships that the purpose for which it was offered was, strictly, "collateral" to the proof of payment; but that, in many of the cases, an incorrect interpretation had been put upon the term "collateral purpose." It was stated by the Lord Chancellor, that, in the case of an unstamped receipt, whether the document is produced for a direct purpose or for a collateral purpose, but still where the matter collateral is to be proved by evidence of the fact of payment of money, and the payment is established by such receipt, the receipt is within the Stamp Act, and cannot be admitted. Lord *Brougham* said, that if a document was used, in any way, to mix up with it the receiving or paying of money, so that, upon the whole, a receipt of money was the matter for which, or in respect of which, or connected with which, the document, was used, it required, past all doubt, to have a stamp, because it was, in one way or other, used as a receipt. Lord *Campbell* stated his opinion to be, that if a document purporting to be a receipt, but unstamped, was offered in evidence, *for any purpose*, if it would be evidence, *as a receipt*, to establish any question litigated, it could not be received for a collateral purpose, merely by a party saying—"I offer it for a collateral purpose, and let it be considered and taken *non scripta* the whole, but part of the receipt."

In the case of *Evans* v. *Protheroe* (*r*), the following document was the subject of discussion on five several occasions, *viz.*:—

"Received this 25th day of August, 1827, of Mr. *Jenkyn Richards*, now and before, the sum of 21*l.*; being the amount

(*q*) 13 Jur. 307; 2 Cl. & Fin. (N. S.), 286; and page 305, *ante*.
(*r*) 15 Jur. 113.

of the purchase for three tenements sold by me adjoining the river *Taff*. Received the contents.

"*Evan Richards.*

"Witness, *John Swaine.*"

There had been several proceedings at law in ejectment; and the object of the bill in Chancery was to restrain an action, and for a specific performance of the alleged contract of purchase; the principal evidence of which was the receipt; which was stamped as a receipt with a duty of 6*d.*, instead of 1*s.*, and also with 20*s.* as an agreement. Two issues had been directed by Vice-Chancellor *Wigram*: one, whether such agreement had been entered into; the other, whether the purchase-money had been paid. At the trial, before Mr. Baron *Platt*, the document had been admitted, and the jury found for the plaintiff on both issues. On a motion for a new trial the Vice-Chancellor was of opinion that the evidence was properly received (*s*). From this decision the defendant appealed to the Lord Chancellor (*Cottenham*), by whom it was with great reluctance, reversed. His Lordship referred to *Matheson* v. *Ross*, which he had carefully examined. The present case differed from that. The object of producing the document was to prove the facts on the issue called collateral, *viz.* the agreement, by proof of the fact of payment; and the fact of payment was attempted to be established by a receipt not having a proper stamp.

The issues were accordingly sent down for a third trial, when the document was rejected by Mr. Baron *Parke*, but the Jury again returned a verdict for the plaintiff. On Vice-Chancellor *Knight Bruce* refusing the motion for a new trial, the defendants appealed to the Lord Chancellor (*St. Leonards*), who refused the motion with costs (*t*). His Lordship said, that the document appeared to him to possess all the requisites to constitute it valid evidence of an agreement; and he entertained no doubt, with all deference to the opinions attributed to the learned Judges (*u*) before whom the case had already come, that the document was receivable as evidence of an agreement; though, by reason of the fiscal regulations of the country, not as evidence of a receipt. Under these circumstances, his Lordship thought the Jury had arrived at the conclusion which he believed to be in accordance with the merits and justice of the case.

(*s*) It had been rejected, on a former trial, by Mr. Justice *Wightman*.

(*t*) 1 De Gex, Macn. and Gord. 572.

(*u*) Mr. Justice *Wightman*, Sir J. *Wigram*, Mr. Baron *Parke*, and Lord *Cottenham*.

Schedule or Inventory.

THESE duties are in the nature of progressive duties, and are in conformity with them. Where the instrument, in which the Schedule is referred to, is chargeable with a duty, (exclusive of progressive duty,) not exceeding 10*s.*, then the same duty is, by the 13 & 14 Vict. c. 97, charged on the Schedule, and so on for every 1080 words after the first; but where it exceeds that amount the Schedule is chargeable with 10*s.* only, progressively.

By the 17 & 18 Vict. c. 83, it is provided that these duties shall not extend or be deemed to have extended to any public map, plan, &c., made under any Act and deposited for reference in any Registry or public office, or with the public books, &c., of any parish, by reason of the same being referred to in any instrument whatever.

Settlement.

THIS duty is now a per-centage, unlimited in its operation, in lieu of a graduated scale from 1*l.* 15*s.* to 25*l.* as before the 13 & 14 Vict. c. 97.

This new duty, which is at the rate of five shillings *per cent.*, is a considerable increase upon all sums exceeding 700*l.*; but upon sums below that amount it is a reduction. It is charged on the stock and funds of all companies and corporations, not being confined, as heretofore, to the public funds, Bank, East India, and South Sea Stock; but as regards money, the charge is not, in its terms, quite so comprehensive as previously.

DUPLICATES are charged with 5*s.* only, and progressive duties of 2*s.* 6*d.*, instead of the same duty as the principal instruments, in all cases of settlement.

Where there are more instruments than one for effecting a settlement chargeable with duty exceeding 1*l.* 15*s.*, one of them only is to be charged with *ad valorem* duty; and where a settlement is made in pursuance of articles upon which *ad valorem*

duty exceeding 1*l.* 15*s.* has been paid, the settlement is not to be charged with such duty; but these exempted instruments are to be charged with the duty to which they may be liable under any more general description; and may be impressed with a denoting stamp.

A point, considered somewhat doubtful under the 55 Geo. III. c. 184, and which is discussed in the former part of this work, (INSTRUMENTS. IV. Fourth Class,) is now set at rest. It is provided that instruments chargeable with *ad valorem* settlement duties, which shall contain any settlement of lands or other property, or shall contain any matter or thing besides the settlement of money or stock, shall be subject to such further duty as a separate instrument would be, exclusive of progressive duty.

Warrant of Attorney.

THE duties on warrants of attorney are, as before, made the same as those on bonds; the duty, where the warrant of attorney is given as a further security for money already secured by bond or mortgage, on which a duty exceeding 5*s.* is imposed, or for securing money exceeding 200*l.*, for which the party is in arrest, being reduced from 20*s.* to 5*s.* Warrants of attorney, in certain inferior Courts not before mentioned, and for securing stock in certain companies not before alluded to, are charged with duty.

Warrants of attorney, not otherwise charged, are subject to a duty of 1*l.* 15*s.*; instead of 1*l.* under the 55 Geo. III. c. 184, Schedule, part 2.

Probate Duty.

BY the 16 & 17 Vict. c. 59, the additional Inventory, in Scotland, of the effects of a deceased person is chargeable only with such further duty as will make up, with what was paid on the former Inventory, the full amount of duty on the total value of the effects, instead of the duty on such total value. This is the only alteration under this head made by any of the recent Acts.

Legacy Duty.

THE legacy duties are affected by the Succession Duty Act in a few instances pointed out at page 882, *ante*. As to this Act

See the TABLE, page 803, *ante*, for the duties and the general description of the acquisitions upon which they are chargeable.

Since the publication of the last edition of the Writer's Treatise, several important judicial decisions on the subject of legacy duty have taken place.

Domicile as affecting legacy duty.

The long-contested question of the effect of domicile on the charge of legacy or residue duty the Writer considered had been entirely put to rest by the judgment of the House of Lords in the Scotch appeal case of *Thomson* v. *The Advocate General* (*z*), and he therefore, without hesitation, laid down the proposition that if a testator or intestate be, at the time of his death, domiciled out of the United Kingdom, no duty is chargeable on any portion of his personal or moveable property; but that if he die domiciled within the kingdom, all such property belonging to him, wheresoever situate, is liable to the duty (*a*).

This he considered a necessary deduction from that case. The test of liability to legacy duty, as established by it, he stated, in broad terms, to be *domicile*, in all cases, without any exception in reference to prior decisions; some of which were manifestly the result of erroneous views of the principle by which the liability to duty ought to be regulated; and he observed that, for the most part, the previous cases were to be treated as nothing. This proposition was, however, objected to, as too general, and the Writer's view was contested in a work (*b*) treating exclusively upon the subject in reference to a claim for duty made by the Commissioners of Inland Revenue on the personal effects, in India, of a person dying there, but who was, at the time of his death, domiciled in England, the work being written for the purpose of showing to the public the supposed erroneous construction of the law by the Commissioners of Inland Revenue; and making it appear that they were insisting on duty, without authority, in that particular instance, and, probably, in many others. An assertion made by the author, that the decision of the House of Lords was looked upon as establishing a doctrine highly satisfactory to the Stamp Office, suggests a far different practical result from that contemplated by the Board. It is the desire of the Commissioners to have principles established which they can apply to all cases. The result of *Thomson's* case

(*z*) 12 Cl. & Fin. 1; 13 Sim. 153.

(*a*) *Ante*, page 698.

(*b*) "Personal Property in the East Indies, in what cases subject to or exempt from Legacy and Residue Duty." by *John Beresford Alcock*, of the Middle Temple, Esq.

was opposed, in their view, to the interest of the revenue; but it was so far satisfactory to them that it settled a principle, simple and intelligible in itself, and applicable, as they were advised, in every instance of a deceased person; and the Writer of the present work and of the general Treatise, to which it is a Supplement, never doubted that he was warranted in laying down his proposition, that domicile was, thenceforward, to be the test of liability to legacy duty, in the broad and general terms in which it is stated. The case in the Court of Exchequer, the demand of duty in which gave rise to the publication alluded to, was as follows (c):—

Personal property in India, of a person dying there, but domiciled in England, liable to legacy duty.

The usual rule was obtained by the Commissioners of Inland Revenue calling upon *Maria Napier*, the widow and administratrix of *John Napier*, deceased, to show cause why she should not render an account of the personal estate of the deceased, and pay the duty on the clear residue thereof. Mr. *Alcock* (d) appeared to show cause on behalf of the administratrix, and stated the facts, as set forth in an affidavit, as follows:—

The deceased was a native of England, and was, at and for some years previously to his death, serving as a captain on the full pay of Her Majesty's 62nd regiment of foot, in the East Indies. The deceased died at Kurrachee, in Scinde, on the 8th July, 1846, intestate, leaving his widow and one child surviving him. The whole of his personal estate, with the exception after mentioned, was situated in the East Indies at the time of his death. Mrs. *Napier*, being resident in India at and for many years before his death, took out administration in the Supreme Court at Bombay, and got in all the personal estate of the deceased in India; and after payment of the expenses incurred, invested the residue in the purchase of loan notes of the East India Company, in her own name. She continued to reside in India for upwards of a year; and during that period received the interest on such investment, and applied the same to her own use, and that of her daughter, who was with her in India, as the widow and sole next of kin of the deceased. In 1846, she left India, and arrived in this country in May following, and, learning that a sum of money was due to her husband's estate from the War Office, she took out letters of administration in the Prerogative Court of Canterbury, under which she received the same. She continued to receive the interest on the stock in India till July, 1848, when she sold a portion of the stock for the purpose of investing the proceeds in England.

(c) *Re John Napier*, deceased (*Attorney-General* v. *Napier*), 15 Jur. 253; 20 L. J. R. (N. S.), Exch. 173; 6 Exch. Rep. 217.

(d) The author of the work referred to.

Shortly after receiving the money here, she was called upon by the Comptroller of Legacy Duties to account for the whole of the personal estate of the deceased, and accordingly she delivered an account of the money received at the War Office, and offered to pay the duty on her daughter's share thereof; but the account was declared to be incomplete, inasmuch as it did not include the Indian property. Mrs. *Napier* declined to render an account of such property, it being situate in India at the time of her husband's death, and collected, and, as she was advised and submitted, completely administered and appropriated there.

On this statement of the facts it was inquired by Mr. Baron *Parke* whether it was intended to dispute that the domicile of the deceased was in England at the time of his death, his Lordship remarking upon the distinction between an officer in the Queen's service, and that of the Company; in reply, the learned counsel for the administratrix declined to admit anything in favour of the Crown, but at the same time he was unable to offer any argument against such domicile; and afterwards, in giving judgment, the learned Baron observed that counsel had very properly abstained from so doing, the point not admitting of any doubt. Mr. *Alcock*, however, insisted that notwithstanding the decision of the House of Lords in *Thomson's case*, in which duty was held not to be payable on property situate and administered in Scotland, belonging to a person who died domiciled in Demerara; and of the converse, established in *Re Ewin*, that the property abroad, of a person domiciled in England, was liable to duty,—the Indian property in the present case was not chargeable. The Indian cases stood by themselves, unaffected by the doctrine of domicile. The case of *Arnold* v. *Arnold* (*e*), in which it was held that the property of the deceased in India was not liable to duty, was recognized in *Thomson* v. *The Advocate General*, and was not disturbed in principle. That case was precisely the same as the present, with this exception only, that in the present instance the deceased was an officer in the Queen's service, whereas in *Arnold* v. *Arnold*, the deceased was in the Company's service; but this the learned counsel said made no difference, for that Lord *Cottenham*, in deciding that case, stated that the circumstances of it were the same, in all respects, as those in the previous case of *Jackson* v. *Forbes* (*f*), and *The Attorney-General* v. *Jackson* (*g*), (in which the same decision was come to,)

(*e*) 2 Mylne & Cr. 256. (*f*) 2 Cro. & Jer. 382; 2 Tyr. 354.
(*g*) 8 Bligh, 15.

notwithstanding the deceased, there, was in the Queen's service. Domicile, therefore, was no point in either case, and as these decisions were not overruled by *Thomson's* case, the present must be governed by them.

Counsel for the Crown was not heard, the Court being clearly of opinion that the principle was definitively settled in *Thomson* v. *The Advocate-General.* There had been conflicting cases before. If it had been held in *The Attorney-General* v. *Jackson*, that the testator was domiciled in England, that case would be overruled; but it was quite clear that the House of Lords proceeded in it without reference to the distinction between residence and domicile; and that case must be considered as falling within the same rule. An account of the Indian property was directed to be rendered in the present instance, and the rule obtained by the Commissioners of Inland Revenue to be made absolute, therefore, with costs.

That the position assumed by the learned counsel is not correct there can scarcely be a doubt. The Writer will not go through all the cases upon the subject; that he has already done (*t*). Down to *The Attorney-General* v. *Jackson*, inclusive, all the Indian cases were determined upon the question of administration, or appropriation; the deceased in every one of them being resident (and, it may be said to be assumed, domiciled also, for no distinction whatever was made) in India. The case of *Arnold* v. *Arnold*, although the Lord Chancellor said he was controlled by the authority of the *Attorney-General* v. *Jackson*, might be said to have been really decided on principle. His Lordship did not, in his elaborate judgment, make use of the word domicile; the principle, however, to be extracted from it is clearly domicile; and therefore, the learned Lord who in *Thomson's* case observed that, had Lord *Cottenham* been present, he would have concurred in the view taken by the House, was justified in that remark. In speaking of the operation of the Legacy Duty Act, in *Arnold* v. *Arnold*, Lord *Cottenham* says, "When the Act speaks of 'any will of any person,' and of the legacies being payable out of the personal estate, it must, I think, be considered as speaking of persons, and wills, and personal estates in this country, that being the limit of the sphere of the enactment." Here his Lordship describes domicile. By a person in this country, can only be meant, a person domiciled here; his Lordship could not intend to include a foreigner resident, merely, in this country; nor to except an Englishman

(*t*) *Ante*, page 685.

who might chance to die whilst travelling, or temporarily residing abroad; and the wills, wheresoever made, and the personal estates, wheresoever situate, of all persons, are by law deemed to be wills, and personal estates in those countries where the parties are domiciled; and such wills, to be valid, must be made according to the law of the domicile. Independently of the authorities, his Lordship observed, he should, upon the construction of the Act, have been of opinion that the legacies in that case were not legacies given by the will of a person intended by the Act. His Lordship, however, takes *The Attorney-General* v. *Jackson* as his authority, in which he entirely concurs, conceiving that the circumstances of both cases were the same, except upon an unimportant point; and therefore, upon authority as well as principle, however little (if at all) the same principle might appear to have originated the authority, his Lordship's judgment was well founded.

Whatever might have been the grounds of any of the prior decisions, and whether, in reference to *Thomson* v. *The Advocate-General,* they can be sustained or not, one thing is now certain, that domicile is a test of liability to legacy duty *in all cases;* and that what are termed the Indian cases are not to be considered as establishing a doctrine in anywise opposed to that of domicile; but that, on the contrary, any decision that cannot be sustained by the application of the principle in *Thomson's* case, must be looked upon as overruled by it.

Such application is not to be affected by shades of difference in the facts attending particular cases, nor by practical difficulties. The liability or non-liability to duty is not to depend upon any variety of circumstances; nor whether such circumstances admit of, or preclude the possibility of enforcing the duty. No act of the representative can influence the question. As Lord *Cottenham* observed in *Arnold* v. *Arnold,* it is quite impossible to suppose that the liability of legatees to the duty can depend upon the act of the executor in proving, or not proving the will in this country; the question being, not whether there be probate or letters of administration in England, but whether, within the meaning of the Act of Parliament, the property, out of which the legacies are payable, be property of a person which passes by the will of that person, within the meaning of the Act. So, it cannot be material whether or not the executor be in this country; his being abroad, wherever the *situs* of the property may be, will create a difficulty in the collection of the duties, which difficulty may be increased by the circumstance of the legatee's being abroad; but the prin-

ciple is not to be disturbed on that account. If, in *Napier's* case, the deceased had left a son in the Company's service, who would, therefore, have been domiciled in India, and he had obtained letters of administration there, the duty would have attached just the same. If such matters affected the liability, then it would be in the power of survivors to control the duty; which might be made to depend upon a person, named executor, or who is next of kin, electing to prove the will, or obtain letters of administration, or not, and upon many other unimportant circumstances. Such things, of course, cannot be. The simple question to be asked is, where was the deceased domiciled? If the answer be,—in the United Kingdom,—then his personal property, wheresoever situate, and by what person, and at what place soever administered, is liable to legacy duty, which the Commissioners of Inland Revenue must obtain as best they can; the difficulties attending the collection having no more to do with the right to the duty, than those interposing between a creditor and his debt have with the right to payment of such debt.

Legacies payable out of real estate.

A question of liability to duty of certain legacies payable out of a fund to be raised from the sale of real estate, under a deed previously executed, has been disposed of in the case of *The Attorney-General* v. *Metcalfe* (*i*). A point was also made, whether, by reason of the legacies not having been actually raised and paid, but having merged, for the benefit of the owner of the real estate, duty could be held to attach as on a legacy "paid, retained, satisfied, or discharged," within the meaning of the Stamp Acts. The facts, which were set forth in a special case, were shortly as follows:—

Lord *Eardley* and his only son conveyed to trustees certain real estates, to the use (subject to a term to secure a rent-charge of 2000*l.* to the son, during their joint lives) of Lord *Eardley* for life, with remainder to the son for life, with remainder to the first and other sons of the latter in tail, with remainders over; with a joint power to revoke such uses, and declare others. By a subsequent deed they executed the power. This deed recited that Lord *Eardley* was not possessed of personal estate sufficient, in the event of his death, to discharge all his debts he might probably owe, and such legacies as he might bequeath, without a sale of his family and other pictures, plate, and other articles of a similar nature; and that therefore the son had agreed, for the accommodation of Lord

(*i*) 6 Exch. 26.

Eardley, to join with him in charging the said lands with the sum of 50,000*l.*, to be raised after the death of Lord *Eardley*, and applied in augmentation of his personal estate, and that Lord *Eardley* had agreed to join in charging the estates with 20,000*l.* to be raised after his death for the use of his son; and that it was agreed, that the pictures, &c., should be assigned to trustees. The deed then contained a revocation of the former uses; and it was thereby directed that the said estates should be, and remain to the use of the trustees, in trust, amongst other things, within six months after Lord *Eardley's* death, to raise by sale such sum, not exceeding 50,000*l.* as should be necessary to make good the deficiency of the personal estate of Lord *Eardley*, in payment of his debts and legacies, and in aid of the same. The estates were then settled, as before, to the use of Lord *Eardley* for life, with remainder to his son and his issue, with remainder, in undivided third parts, to Lord *Eardley's* three daughters, Lady *Saye and Sele*, Lady *Culling Smith*, and *Selina*, wife of *John Childers*, Esq., for their lives respectively, with remainder to their sons in tail. And Lord *Eardley* assigned all his pictures, furniture, &c., to trustees, to go, for the most part, as heir-looms.

Lord *Eardley* by his will gave, amongst other legacies, to his executors two of 10,000*l.* each, in trust for his daughter Lady *Saye and Sele*, the same to be subject to her appointment. The son died without issue, in the lifetime of his father, whose personal estate, after his death, was not sufficient for payment of his debts and legacies without a part of the said sum of 50,000*l.*, out of which it was necessary to provide for payment of the legacies to Lady *Saye and Sele*.

Common recoveries were suffered, and the estates tail in the lands thereby barred, and partition was made; one share being limited to such uses as Lady *Saye and Sele*, her husband and their eldest son, or the survivors of them, should jointly appoint; and it was agreed, that instead of raising the legacies they should be charged on the estates in proper proportions. The sums apportioned to the lands taken by the other daughters and their sons were at once paid to the trustees, leaving a large amount to be charged, and which was charged on Lady *Saye and Sele's* own share of the estates so limited as aforesaid; the same being secured by means of a term created for the purpose, and vested in the trustees.

Lady *Saye and Sele*, by virtue of the power in her father's will, appointed by deed the sums received by the trustees on account

of her legacies, to her husband; and directed that the residue should be paid to such person as she should thereafter appoint; and, in default of appointment, then to her husband. She died without making any further appointment.

Lord *Saye and Sele* and his son by deed conveyed the estates, subject to the said term, to the use of themselves and the survivor in fee. On the death of Lord *Saye and Sele*, his son became seised of the said estates, and, as residuary legatee of his father, entitled to the residue of the legacies charged thereon; and he called upon the trustees to surrender the term to merge; and the same was surrendered accordingly, whereby the demand of the trustees became extinguished. This extinguishment took place prior to the 8 & 9 Vict. c. 76; and it was at first understood that the objection to the claim for legacy duty was the same as that in *The Attorney General* v. *The Marquis of Hertford* (*k*); *viz.*, that it was the case of the appointment by will under a power given for that purpose by deed, of money charged upon real estate, and therefore within the proviso contained in the 45 Geo. III. c. 28, s. 4, whereby such gifts were exempted from duty. But it was not so put by the learned counsel for the defendants. It was contended that the legacies were not gifts that took effect by virtue of a will within the meaning of that Act and the 36 Geo. III. c. 52, s. 7; and that the case was distinguishable from that of a will under a power. That, without the aid of the deed there was no fund for payment of the legacies. It was also assimilated in principle to the cases in which duty was held to be payable only where the trustees, having a discretion to sell real estate or not to sell, did actually sell (*l*).

The Court, however, held, that duty was payable on every portion of the legacies. The gifts took effect by virtue of the will, and the 50,000*l.* which Lord *Eardley* had stipulated for, as a fund for payment of any debts and legacies he might leave, was his personal estate, which he had, as it were, purchased; he stood in the character of a mortgagee; and any legacy given to be paid out of this fund was liable to duty. As regarded the non-payment of the remainder of the legacies, there could not possibly be any valid objection to the claim. If the legacies, and the land on which they were charged, devolved on the same person, whereby it became unnecessary for the trustees to realize the money, and

(*k*) 14 M. & W. 284 (first case).

(*l*) *Attorney-General* v. *Mangles*, 5 M. & W. 120; *Attorney-General* v. *Simcox*, 1 Exch. Rep. 749.

the proprietor of both did not require them to do so, it was, virtually, a satisfaction of the legacies, within the meaning of the Stamp Acts.

It was observed by the counsel for the Crown, that when the executors of Lord *Eardley*, instead of insisting on the legacies being raised at the time of the partition of the estates, took a security for them on a part of the estates, such legacies were at that period satisfied and discharged, so that the duty attached and became payable. They had become trustees of the money, which they held for the benefit of the *cestui que trust*, who was then entitled to the enjoyment of the fund. But it was not necessary to confine his argument to that point, as there was clearly a subsequent actual possession of it by the beneficial owner.

A reference to the clause upon which the counsel for the defendants mainly rested his case will show at once how untenable was his position. The enactment is the 45 Geo. III. c. 28, s. 4, which repeats (with addition, as to legacies out of real estate) that of the 36 Geo. III. c. 52, s. 7. It declares what shall be deemed to be a legacy chargeable with duty; enacting that every gift, by any will of any person dying after the passing of the Act, which, by virtue of any such will, shall have effect or be satisfied out of the personal estate of such person so dying, or out of any personal estate which he shall have power to dispose of as he shall think fit, or which shall have been charged upon or made payable out of any real estate, or be directed to be satisfied out of any money to arise by the sale of any real estate of the person so dying, or which he may have power to dispose of, shall be deemed and taken to be a legacy within the meaning of the Act. The gift, therefore, to pursue the argument against the duty, must be one which is not only given by a will, but is to have effect and be satisfied by virtue of the same will. In the present instance the gifts were by will, but they could not have effect and be satisfied by virtue of the will; without the deed there were no means of giving effect to them; they could only be satisfied, therefore, by the aid of the deed, and consequently were within the terms of the Act, to have effect and be satisfied by virtue of the deed, or the deed and the will together. It will be seen in a moment that such an argument is altogether inconsistent with, and, if available, would be destructive of one-half of the clause itself. A gift is to be deemed a legacy, liable to duty, whether it is to come out of property, real or personal, belonging to the testator, or out of that which is not his own, but which he has power to dispose of. It may be asked, by way of

reply to the foregoing argument, How can a testator give away any of such latter description of property, unless it has been placed at his disposal by means of some previous instrument, whether a deed or a will? and how can any such gift have effect or be satisfied without the aid of such previous instrument? It is obvious that, in every such case, the gift must be held to have effect, within the meaning of the Act, by virtue of the will making it, whether or not any other document be also essential for establishing the title to it, or for realizing it.

Election. Duty not payable where party electing takes personal estate, but payable where it is real.

In *Lawrie* v. *Clutton* (*m*) a question was argued as to a claim for legacy duty arising by reference to the doctrine of election.

A testator by his will gave, amongst other things, 10,000*l.* Consols upon certain trusts in favour of his daughter and her issue. He gave various specific bequests to his wife, and devised to her certain real estates; he gave her also the residue of his real and personal estate. And he declared that all government or public funds or securities, which at his decease should be standing in the joint names of himself and his wife, should, for the purpose of answering the legacies thereby given, be considered his property, and thereby made liable to the same.

The testator had invested large sums in the funds in the joint names of himself and his wife, which she took by survivorship; and his personal estate was insufficient to pay his debts and legacies. But shortly after his decease his widow executed a deed reciting these facts. And, with the view of satisfying the purposes declared by the will, and to avoid the sale of any specific bequests, or of the real estate for payment of the remaining debts, she transferred to the trustees of the will two large sums of stock. After paying the debts there remained stock in trust for the daughter exceeding the amount of the legacy given to her, upon which legacy duty was claimed. The question of liability was very elaborately argued before the Master of the Rolls on a petition in the suit instituted for administering the estate. A considered judgment was afterwards delivered.

His Honor was of opinion that duty was not payable. Under the 36 Geo. III. c. 52, s. 7, a legacy, chargeable with duty, is described to be "a gift by any will which shall, by virtue of such will, have effect, or be satisfied out of the personal estate of the testator, or out of any personal estate which he shall have power to dispose of." These latter words, he considered, applied to funds over which the testator had a power of appointment, and not

(*m*) 15 Beav. 131.

to any which belonged to a stranger, and which he might induce that stranger to dispose of as the condition upon which he would be entitled to take a legacy given by the will; and he therefore had no hesitation in deciding that the mere fact of electing to take under the will did not make this property, which neither originally belonged to the testator, nor was property over which he had a power of disposition, subject to any charge for legacy duty.

There was more difficulty, however, in reference to the 45 Geo. III. c. 28, making legacies charged upon land liable to duty; sect. 7 of which, after a similar enactment as to personal estate, proceeds thus, viz.:—"or which shall have been charged upon, or made payable out of any real estate, or be directed to be satisfied out of any monies to arise by the sale of real estate of the person so dying." The question raised was, that this provision not merely embraced all cases of legacies charged on the real estate directly and expressly, but all cases where by operation of the rules of equity a legacy became payable out of real estate. If a testator devised his real estate to *A.*, and by the same will disposed of 1000*l.* belonging to *A.* in favour of *B.*, whatever might be the course of conduct pursued by *A.*, *B.* would, in any event, take an interest in the real estate to the extent of 1000*l.* If *A.* elected to take under the will, he would take the estate charged with the 1000*l.* in favour of *B.*; and if he rejected the devise, the heir-at-law would take the land with the same burthen. And, if both refused, *B.* would himself take the land. His Honor observed, that it was extremely difficult to discover any distinction that was not merely nominal between any of the four following cases, viz.:—

A devise of land to *A.* charged with 1000*l.* Consols to *B.*

A similar devise on condition that *A.* transferred 1000*l.* Consols to *B.*

A devise to *A.* on condition that out of the Consols standing in his name he transferred 1000*l.* to *B.*

A devise to *A.* and a bequest to *B.* of 1000*l.* Consols standing in the name of *A.*

He admitted the force of the argument, that, as in the first three cases, there would be a clear legacy to *B.*, charged on the real estate within the words of the statute, and as the legal effect of the remaining mode of effecting the charge was the same; and as, in truth, they all took effect by means of the doctrine prevailing in courts of equity, the consequence, with regard to legacy duty, must also be the same. It was not, in his opinion, any answer to this, to suggest that there would be considerable difficulties in working

out such a principle, even if that observation were correct. Assuming, therefore, that the will of the testator had made this 10,000*l.* a charge on his real estate, he should not feel much hesitation in deciding that legacy duty must be paid upon it. He was, however, of opinion, that the 10,000*l.* Consols was not a gift by the will of the testator, charged upon or made payable out of his real estate. The testator had not bequeathed stock which was specifically the property of his widow; he had given to his daughter stock, generally, as if he had himself possessed it, or personal property sufficient to purchase it. The will did not point specifically to the stock, which became the wife's by survivorship. If he had expressly disposed of 10,000*l.* Consols belonging to his wife, the daughter would have had a charge on the land devised to the wife. But, as it was, no question of election, properly speaking, arose; the widow might have kept the real estate, and wholly disregarded the bequest; which had simply failed, because the testator had no stock; or, if it was not a specific bequest, because of the deficiency of the personal estate.

Appointment of rent-charge to wife under power in a will.

The cases of *The Attorney General* v. *Pickard* (*n*), and others therein referred to, establish the liability to duty of a rent-charge on real estate appointed to a wife by her husband, by deed or will under a power contained in the will of a testator devising the real estate, as a legacy under such latter will. *The Attorney General* v. Lord *Henniker* (*o*) is a case of the same description, but in which the claim to duty was resisted on the ground that the husband had appointed the annuity to be taken in lieu of dower. The case was stated in a special verdict, the substance of which was as follows. *John* Lord *Henniker* devised certain real estates in Ireland, and elsewhere, to *John Minet Henniker* and others, upon trust to sell the same, and purchase with the proceeds, estates in Suffolk, which he directed should be conveyed in strict settlement, so that they might accompany the Barony of *Henniker*, and he directed that in such settlement there should be contained the usual power enabling the tenant for life, for the time being, by deed or will to charge the estates with any annual sum, not exceeding one-third of the value, for the benefit of any woman he might marry, as and for and in the nature of a jointure. After the testator's death the said *John Minet Henniker* became Lord *Henniker* and entitled to the estates for life. The estates directed to be sold were sold, and the proceeds laid out in the purchase of

Appointment made in lieu of dower liable to duty.

(*n*) *Ante*, page 676.
(*o*) 21 L. J. R. (N. S.) Exch. 293; 7 Exch. Rep. 331.

other estates, which were conveyed to the trustees, but no settlement of them was made. *John Minet* Lord *Henniker* survived his co-trustees, and made his will, whereby, in pursuance of the said power, he charged all the estates which he had power to charge with the annual sum of 2000*l.*, free and clear from taxes, and without any deduction whatsoever, unto his wife Lady *Mary Henniker* for her life, to be in full for her jointure, and in lieu, bar, and satisfaction of her dower or thirds at common law, or by or on account of any custom, free bench, or widow's part which she otherwise might claim out of his estates; and he provided that in case he was not authorized to appoint so large a sum as 2000*l.* a year, the deficiency should be a charge upon his own estates. The value of the estates was not sufficient to admit of the payment of the full annual charge of 2000*l.*, but the precise sum was agreed upon and stated in the verdict.

It was argued for the defendant, that the wife was a purchaser of the annuity by reason of being deprived of her dower; and that it was not, therefore, a legacy. But the Court held that whatever condition might be annexed to it she was still the recipient of the legacy, which she took as the gift of the first testator. The Court suggested that there might have been a question, if this had been a condition annexed by the testator himself, whether the *whole* of the money received was a legacy, or whether a *part* of it was not a purchase of some interest which might possibly reduce the duty to be paid. That might be so, but that was a point to be settled thereafter, whenever it came before the Court; the point did not arise in that case. The duty was payable; and the present Lord *Henniker*, either as the heir of his father, who was the surviving trustee, or as the tenant for life in possession was the person liable for it.

From this decision, the defendant appealed to a Court of Error (*p*), where the judgment was confirmed; the Court hinting that if the condition had been in the original will, as it was contended it ought to be considered, it would probably have made no difference.

Appointment made under a power to appoint in lieu of dower, liable.

The point thus left undecided was afterwards disposed of in the case of *Sweeting* v. *Sweeting* (*q*). The testator, *John Sweeting*, by his will devised to his son, *John Hankey Sweeting*, certain real estates for life with remainder to his children as he should appoint; and in default of appointment to them as tenants in common in

(*p*) Lord *Henniker* v. *The Attorney-General*, 22 L. J. R. (N. S.), Exch. Cham. 41; 8 Exch. Rep. 257; 16 Jur. 1143.

(*q*) 22 L. J. R. (N. S.), Cham. 441; 1 Drewry, 331.

tail general, with cross remainders. And the testator gave power to his son to limit and appoint by deed, to or in trust for any woman he should marry, and that either before or after marriage, for her life, for her jointure, and in bar of dower, any annual sum or rent charge, not exceeding 400*l.* a year to be issuing out of the said lands.

John Hankey Sweeting by deed appointed to his wife two annuities amounting together to 300*l.*, free and clear of all taxes and deductions, charged upon the said lands. He died without making any other appointment, leaving his wife surviving, and leaving also, several children, who thereupon became entitled to the estates as tenants in common.

The Commissioners of Inland Revenue required legacy duty to be paid upon these annuities, which being refused, a petition was presented by *The Attorney-General* in the suit instituted for administering the estate of the testator. The claim was opposed on the ground that gifts only are chargeable with duty; whereas the power was given to the son to purchase immunity from dower; it was no gift to the widow; if any gift at all, it was one for the benefit of the son, and chargeable with duty, if any, at 1*l.* per cent. and not with 10*l.* per cent. as a gift to his widow, who was a stranger in blood to the testator.

Vice-Chancellor *Kindersley* decided in favour of the claim. His Honor put several cases. If a testator gave a legacy out of personalty on condition of the legatee doing some act; taking the name and arms of the testator, for instance; or conveying an estate to a third person; or in the case of a daughter, a widow, having children, of her maintaining her children; in all such cases there would be a consideration in return for the legacy; still the duty would be payable. If the condition involved a return of something to the testator's estate, it might be a question whether there should not be a deduction. It was not the less a gift liable to duty, whether out of personal or real estate, because it was on condition; it could make no difference that the gift was made through the medium of a nomination or an appointment under a power created by the will. That was the case in the present instance; the testator created a power to appoint a jointure to his wife, but on condition that she released her dower, and whether the dower referred to was that out of the particular estate, or generally, was immaterial; nor was it material whether the condition was imposed by the instrument executing the power or by the will creating the power.

Money arising from real estate sold under a power.

Several cases will be found in the former part of the Treatise (r) as to the liability to legacy duty of money arising from the sale of lands sold, not under an absolute direction in the testator's will, but under a power contained therein, which establish that to the extent of the exercise of the discretion given to the trustees by their selling the property, duty was chargeable; but that no duty was payable in respect of the lands not sold.

Real estate sold under a decree in a Chancery suit.

In *Hobson* v. *Neale* (s), a case was sent by the Master of the Rolls to the Court of Exchequer for its opinion, whether duty was payable or not. The testator, *Samuel Hobson*, by his will devised his estates to trustees upon trust, among other things, to pay certain annuities to his two daughters for life; and, subject thereto, in trust for his brother *George Hobson* for life, and, after his death, for his children. And he provided that it should be lawful for the trustees, with the consent of his brother, and after his death, of the persons entitled to the reversion or remainder, to sell the estates, and invest the proceeds in the funds upon the trusts of the will. A bill in Chancery was filed by *George Hobson* and his children, who were infants, to have the estates sold; and which, after the usual inquiries, were sold under a decree made in the cause, the money being paid into court. On the daughters dying, legacy duty was claimed on the money set apart to answer the annuities, which was opposed on the ground that there was not an uncontrolled power to sell the estates, and that the sale took place under the inherent power of the Court of Chancery.

The Court sent a certificate to the effect that if the Court of Chancery, in directing a sale, really acted on its general power of ordering sales of real estate when the *corpus* of the estate is charged with an annuity, and such annuity is in arrear, in order the better to secure the payment of the annuities, then legacy duty was not payable; but that if it acted on the clause in the will, and, in consequence of the clause, compelled the trustees to execute the power, then legacy duty was payable; inasmuch as they thought that, in that case, the sale was substantially by the direction of the testator himself.

The case was afterwards brought on by petition before the Master of the Rolls, who doubted whether the Court of Chancery did not act on its own authority, and not by reference to the power in the will; and, therefore, would not direct the duty claimed to be paid out of the fund in Court.

(r) *Ante*, p. 660

(s) 22 L. J. R. (N. S.), Exch. 175; 8 Exch. Rep. 368.

Sale of land under a power, the money to be again invested in land.

In the suit of *Mules* v. *Jennings*, in the Court of Chancery, a case was also recently sent for the opinion of the Court of Exchequer as to the liability to legacy duty of the proceeds of the sale of real estates, sold under a power in a will, but where the proceeds, in case of any sale being made, were directed to be again laid out in the purchase of land. The estates were sold by order of the Court, and the money was paid into court, and applied for the benefit of the persons in succession, who would have been entitled to the real estate, if purchased. The Court of Exchequer considered that this was nothing more than a power to exchange lands, and that legacy duty was not payable.

Probate and legacy duties payable on the personal property of the deceased, applied in discharge of mortgage debts created by a previous owner of the real estate.

A rule was obtained against *John Taylor* and *Benjamin Taylor*, executors of *Benjamin Taylor*, deceased, for the usual account of the estate of the deceased, and payment of legacy duty thereon. This course was adopted by consent, the facts being stated by an affidavit made by the said executors, for the purpose of taking the opinion of the Court on a point upon which the claim for the duty was resisted.

John Taylor, deceased, being seised in fee of certain lands, mortgaged the same by demise, in 1823, to secure two sums of 7000*l*. and 1000*l*. In 1835 he made his will, whereby he devised to his brother *Benjamin Taylor*, since deceased, the father of the deponents, the said lands, and appointed him his executor, and died, leaving his said brother his heir-at-law. *Benjamin* proved the will, and received all the personal estate of the testator *John*, which was of inconsiderable value, and not more than sufficient to pay his funeral and testamentary expenses and a few simple contract debts, in payment whereof it was applied. *Benjamin* afterwards died, having by his will devised and bequeathed all his real and personal estate to his two sons, the deponents, upon trust, after payment of his debts, for all his children. He appointed the deponents his executors, who proved the will. *John Taylor* had continued seised of the lands, subject to the mortgages, until his death, paying the interest on the mortgages. *Benjamin*, also, enjoyed the said estates during his life, subject to the mortgages, the interest of which he paid. At the time of his death, *Benjamin* was possessed of considerable personal estate, which, to the extent of 7500*l*., was applied by the deponents in paying off the mortgages. And in respect of such payment, they had claimed to have probate duty returned to them on the ground that they had paid debts of the deceased *Benjamin Taylor*, payable by law out of his personal estate, which the Commissioners of Inland Revenue had

refused to allow; and they now also claimed to be discharged from the payment of legacy duty for the same reason.

The Court made the rule absolute. *Benjamin* was under no obligation to pay off the mortgages, for they were not his debts, but the debts of *John*. *Benjamin's* executors, who were also his devisees and heirs-at-law in gavelkind, applied *Benjamin's* personal property in payment of *John's* debts, and then asked for a remission of duty, because they had exonerated their estate by paying the debts of another person with their testator's money, for which there was no pretence (*u*).

Gift to wife for the maintenance of herself and her children; a trust for the children; and an account must be rendered.

The usual rule was obtained against the executrix (and formerly the wife) of *John Harris* (*x*), deceased, and her present husband, to show cause why they should not deliver an account of the legacies and property of the deceased. The testator, by his will, gave and bequeathed all his property, of whatever description, to his wife for the maintenance of herself and their children. It was contended, on showing cause, that the wife took absolutely the whole interest in the property; if not, that the interest of the children was of so uncertain and unascertainable a nature that no legacy duty could attach, it would be impossible for the executrix to ascertain how much had been expended upon each child for each meal, &c. The Court was of opinion, that there was a trust for the children; that it was not necessary for the Crown to show that the children (by reason of their receiving each a benefit amounting to 20*l.* or upwards) were liable to legacy duty, but only that there was a possibility of their being so, and that the rule must be made absolute.

Liability of new trustees for legacy duty on annuities.

The liability to pay duty on property vested in trustees, given to be enjoyed by persons in succession, under the 36 Geo. III., c. 52, s. 13, attaches as well to new trustees as to those appointed by the will (*y*).

Residue not chargeable with the duty on legacies.

The Crown has no claim on the residue of a testator's personal estate for duty on legacies paid by the executor who retained the duty but neglected to discharge it (*z*).

(*u*) Re *Benjamin Taylor, deceased*, 8 Exch. Rep. 384; 22 L. J. R. (N.S.) Exch. 211

(*x*) Re *Harris, deceased*; 7 Exch. Rep. 344.

(*y*) Re *Jones's Trust*, 21 L. J. R. (N. S.) Chan. 566.

(*z*) *Wright* v. *Barnewell*, 19 L. J. R. (N. S.) c. 38; 13 Jur. 1041.

ABSTRACT OF 17 & 18 VICT. c. 83.

New duties.

Sections 1 & 2.—The duties affected by this Act, and which are to commence on the 11th October, 1854, are as follows, viz.:—

Bills and notes.

On BILLS OF EXCHANGE and PROMISSORY NOTES the duties are much reduced, except in the cases of drafts or orders on demand, and bankers' re-issuable notes, which continue as before.

Foreign bills.

FOREIGN BILLS, those both drawn and payable out of the kingdom, are, if indorsed or negotiated within it, charged with the same duties as foreign bills drawn in but payable out of the kingdom. This is altogether a new subject of charge.

Conveyances for annuities.

CONVEYANCES in consideration of annual payments in perpetuity, or for indefinite periods, which previously ranged with instruments liable to the ordinary duty of £1 15*s.*, were by the 16 & 17 Vict. c. 63 (1853), charged with *ad valorem* duties after the same rate as conveyances upon sale for sums in gross; that is, 10*s. per cent.* on the value of the annual payments calculated at twenty-five years' purchase, or £12 10*s. per cent.* on the annuity. These are now charged with the same duties as leases exceeding one hundred years, at yearly rents equal to such annual sums as after mentioned; which is a reduction from £12 10*s.* to £6 *per cent.* on the annual payments.

Leases for terms exceeding thirty-five years

LEASES for terms exceeding those usually granted for the purpose of immediate occupation partake rather of the character of conveyances, and the inconsistency of charging them with the same duties as leases for short terms has become strikingly apparent since the reduction of those duties by the Act of 1850. The present Act increases the rate of duty from 10*s. per cent.* on the rent to £3 in the case of a lease for a term exceeding thirty-five, and not exceeding one hundred years; and to £6 *per cent.* on leases exceeding one hundred years.

Leases for less than a year.

Leases for less than a year have heretofore fallen under the head of "lease not otherwise charged," and been subject, uniformly, to the duty of £1 15*s.*, equal to that on a lease reserving a rent of £350. By this Act they are now to be charged at the same rate as ordinary leases.

Progressive duties on the foregoing. Duplicates and Counterparts.

The above conveyances and leases are chargeable with progressive duty by reference to that head in the 13 & 14 Vict. c. 97; and the duplicates and counterparts are made subject to the duties granted under the head "DUPLICATE or COUNTERPART" in that

Act. A similar provision was omitted to be inserted in the 16 & 17 Vict. c. 63, in regard to conveyances for annual sums.

Licence to demise copyholds.

COPYHOLDS.—A LICENCE TO DEMISE is reduced to 10*s*. as a maximum; and to the same duty, where less than 10*s*, as on a lease at a yearly rent equal to the annual value of the estate to be demised, in any case where the value is expressed.

Pawnbrokers in Dublin.

PAWNBROKERS in DUBLIN.—The duty on the annual licence to be taken out by these persons is reduced to one half of the amount imposed by the assimilating Act.

Former enactments to be applied.

Sect. 2.—Except where express provision is otherwise made, all former enactments relating to stamp duties are to be applicable to the duties imposed by this Act; and the exemptions are to continue.

When and how foreign bills are to be stamped.

Sect. 3.—The duties on foreign bills drawn out of the kingdom are to be payable on such bills as are paid, indorsed, or negotiated within it; and are to be denoted by adhesive stamps.

Bills dated abroad to be deemed foreign.

Sect. 4.—Where a bill purports to be drawn abroad it is to be deemed so to have been, and is to be chargeable accordingly, notwithstanding it may have been actually drawn within the kingdom.

This provision is intended to prevent advantage being taken against the innocent holder of a bill actually drawn here, but purporting to be drawn out of the country.

Penalty for negotiating, &c., unstamped foreign bill.

Sect. 5.—The holder of a bill drawn out of the kingdom is, under a penalty of £50, before presenting it for payment, or indorsing, or negotiating it, to affix an adhesive stamp on it, and to cancel the stamp by writing across it his name and the day of cancelling it; and any person presenting for payment, or paying, or indorsing any such bill not so stamped is made liable to a like penalty. No such bill is to be available in the hands of any person receiving it without a stamp affixed and duly cancelled.

Penalty for drawing a single bill as one of a set.

Sect. 6.—A practice is known to exist of drawing one foreign bill only, but purporting to be in a set, on a stamp applicable to one of a set, thus evading two-thirds of the duty properly chargeable. To prevent this, a penalty of £100 is imposed for drawing a bill, purporting to be in a set, and not drawing the whole set; or for not, on negotiating it, transferring or delivering the whole set. A person receiving any such bill and not receiving, or taking a transfer of all the set, is deprived of the power of making it available for any purpose.

Set of two bills.

It is to be noted that if a set of two bills only be drawn, each bill is to be on the duty chargeable for a single bill.

Cheques, unless stamped, not to circulate beyond fifteen miles.

Sect. 7 & 8.—Unstamped cheques on bankers are not to be sent to or circulated at any place beyond fifteen miles from the bank at which they are payable, under a penalty of £50 A person, therefore, before remitting a cheque to any such place, must affix a stamp to it, or he will incur the penalty. If he omits to do it, the person receiving it cannot make it available beyond the proper distance by himself placing a stamp upon it; and to avoid incurring the penalty he ought to return it. But it is permitted to any person who shall receive, at a place within the distance, a cheque which has been lawfully issued unstamped, to make it negotiable beyond the distance by affixing and cancelling the necessary stamp.

Cheques under £5 to be valid.

Sect. 9.—All negotiable drafts for sums under £5 not drawn and transferred in conformity with the regulations of the 17 Geo III. c. 30, are, by that Act, declared to be void. These regulations could not be complied with in regard to ordinary cheques; and although, by reason of a provision contained in the 7 Geo. IV. c. 6, s. 9, no penalty was incurred by drawing a cheque under £5 without conforming to them, the cheque itself was void in law. To remedy this it is enacted that the 17 Geo. III c. 30, shall not extend to drafts for the payment of money held to the use of the drawer.

Draft stamps may be used for receipts, *et contra*.

Sect. 10.—The adhesive penny stamps issued for drafts and receipts respectively, may be used for either description of document, without regard to their being specially appropriated to the other by name. In future these stamps will not be limited, by name, to one description alone.

What are to be deemed bank notes,

Sect. 11.—The provisions of the Acts for limiting the circulation of notes by bankers being evaded by issuing drafts to order, and indorsed, and which are practically payable to bearer on demand, an extended description of what shall be deemed bank notes throughout the kingdom is given, including bills, drafts, and notes which entitle, or are intended to entitle, the holder, without indorsement, or without further indorsement than is thereon at the time of issuing them, to payment on demand, whether expressed to be payable to bearer on demand or not.

and be subject to the Stamp Acts.

Sect. 12.—All such bills and notes are to be deemed bank notes, and to be liable to stamp duties and composition for stamp duties, and to all the provisions of the Stamp Acts.

Exemption of receipt by post of bills, &c., repealed

Sect. 13.—The exemption from the receipt stamp duty of letters acknowledging the safe arrival of bills, notes, or other securities for money is repealed.

The operation of this clause is of an extensive and important character, seeing that acknowledgments of payments made by bills or notes are receipts within the Stamp Acts, and, therefore, chargeable with duty. In future, letters containing such acknowledgments must be stamped as receipts.

Receipts for money paid to the Crown exempt.

Sect. 14.—Receipts for money paid to the use of the Crown are exempted from stamp duty.

This is a relief to parties paying money to the Crown; and will be found to be a great convenience.

Denoting stamp on duplicates and counterparts under 16 & 17 Vict. c. 63.

Sect. 15.—In imposing *ad valorem* duties on conveyances in consideration of annual payments, by the 16 & 17 Vict. c. 63, provision was omitted to be made for charging the duplicates or counterparts of these conveyances with the same duties as are granted by the 13 & 14 Vict. c. 97. The omission is supplied by this clause, by directing the commissioners to impress the denoting stamp on any such counterparts or duplicates as may be produced stamped with these duties.

Deeds to be stamped in respect of every consideration expressed.

Sect. 16.—These conveyances, if made in consideration partly of annual sums and partly of money or stock, are to be charged with duty in respect of both considerations.

And in any case, where an instrument liable to *ad valorem* duty in respect of money or stock, is made, also, for any other valuable consideration, it is to be chargeable with such further stamp duty as a separate instrument, made for such other consideration alone, would be, except progressive duty.

Commissioners may require affidavit that consideration is truly stated.

Sect. 17.—There is reason for believing that, sometimes in instruments brought to the Stamp Office to be assessed with duty, and to have the adjudication stamp impressed upon them in order to certify that they are fully stamped, the true consideration is suppressed. This clause authorizes the Commissioners to require an affidavit to be made, in any such case, showing that there is no omission in the instrument of any fact upon which the duty depends, before they shall be obliged to adjudicate. They may also, with reference to the progressive duties, call for an affidavit of the quantity of words contained in the instrument.

Affidavit not to be used for any other purpose.

Sect. 18.—But it is provided that any such affidavit shall not be made use of except upon an inquiry as to the stamp duty; and that the person making it shall be relieved from all penalties that may have been incurred by reason of any such omission.

Indemnity where duty not paid in consideration for good-will.

Sect. 19.—The recent decision of the Court of Exchequer, on a case stated under the 13 & 14 Vict. c. 97, that good-will was property, the instrument of the transfer of which, or of the premises

in which the trade is carried on, was chargeable with *ad valorem* conveyance duty in respect of the money paid or appropriated for the good-will, having created alarm lest the parties to conveyances of this description, or the solicitors preparing them, should have incurred penalties, and the validity of the deeds should be affected, indemnity was sought for and is afforded by this clause; which declares also that the deeds shall be good notwithstanding the full duties may not have been paid.

Licences to pawnbrokers in Dublin reduced.

Sect 20.—By this clause the stamp duty of £15 on a pawnbroker's annual licence in Dublin is reduced to £7 10*s*.

Exemption of contracts to serve in colonies.

Sect. 21.—All instruments relating to the service, as apprentices or otherwise, in the colonies, of artificers, clerks, domestic servants, handicraftsmen, gardeners, servants in husbandry, or labourers, are exempted from stamp duty. Agreements under hand only, for any of these purposes, were, for the most part, previously exempt.

Maps, &c. deposited under statutes not to be charged as schedules when referred to in deeds.

Sect. 22.—Doubts having been suggested whether maps, plans, and other public documents deposited, in pursuance of Acts of Parliament, for reference, were not chargeable with stamp duty under the head "SCHEDULE or INVENTORY," when referred to in instruments, it is enacted that these duties shall not be deemed to extend, or to have extended, to documents of this description.

Leases for less than a year, how charged.

Sect 23.—A lease for any term or period less than a year is to be chargeable with the same *ad valorem* duty as a lease at a yearly rent of the same amount as the sum reserved.

Discount on bill stamps.

Sect. 24.—On the purchase, to the amount of £5, of bill or note stamps of 1*s*., or under, a discount of £7 10*s*. *per cent.* is to be allowed.

No charge to be made for the paper.

Sect. 25.—In consideration of such allowance, if any person, on the sale of a stamp, charge more than the duty, he is to forfeit £10.

Allowance for stamps rendered useless.

Sect. 26.—Stamps rendered useless by this Act may be exchanged for others at any time before the 6th April, 1855.

Unstamped documents to be admitted in criminal proceedings.

Sect. 27.—Instruments liable to stamp duty are to be admitted in evidence in criminal proceedings although not stamped.

Stamp Duties.

17 & 18 Vict. c. 83.

An Act to amend the Laws relating to the Stamp Duties.

[9th August, 1854.]

Whereas it is expedient to repeal the stamp duties now payable in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and to impose other stamp duties in lieu thereof, and otherwise to amend the laws relating to stamp duties: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Stamp duties on instruments mentioned in schedule to this Act, payable under other Acts, repealed, and the duties named in said schedule granted in lieu thereof.

Sect. 1.—From and after the tenth day of October one thousand eight hundred and fifty-four the stamp duties now payable in Great Britain and Ireland respectively, under or by virtue of any Act or Acts of Parliament for or in respect of the several instruments, matters, and things mentioned or described in the schedule to this Act annexed, and whereon other duties are by this Act granted, shall respectively cease and determine, and shall be and the same are hereby repealed; and in lieu thereof there shall be granted, charged, and paid in and throughout the United Kingdom of Great Britain and Ireland, unto and for the use of her Majesty, her heirs and successors, upon and in respect of the several instruments, matters, and things described or mentioned in the said schedule, or upon or in respect of the vellum, parchment, or paper upon which any of them respectively shall be written, the several duties or sums of money specified and set forth in the said schedule, which said schedule, and the several provisions, regulations, and directions therein contained, shall be deemed and taken to be part of this Act, and shall be applied, observed, and put in execution accordingly: Provided always, that nothing herein contained shall extend to repeal or alter any of the said stamp duties now payable in relation to any bill of exchange, promissory note, or other instrument which shall have been drawn, made or signed, or which shall bear date before or upon the said tenth day of October one thousand eight hundred and fifty-four.

The new duties by this Act granted to be denominated stamp duties, and to be under the care of Commissioners of Inland Revenue.

Powers and provisions of former Acts to be in force.

Sect. 2.—The said duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all the powers, provisions, clauses, regulations, directions, allowances, and exemptions, fines, forfeitures, pains, and penalties contained in or imposed by any Act or Acts or any schedule thereto, relating to any duties of the same kind or description heretofore payable in Great Britain and Ireland respectively, and in force at the time of the passing of this Act, shall respectively be in full force and effect with respect to the duties by this Act granted, and to the vellum, parchment, and paper, instruments, matters, and things charged and chargeable therewith, and to the persons liable to the payment of the said duties, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, allowed, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said duties hereby granted, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the express provisions of this Act, as fully and

effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the said duties by this Act granted.

Duties on bills drawn out of the United Kingdom to be denoted by adhesive stamps.

Sect. 3.—The duties by this Act granted in respect of bills of exchange drawn out of the United Kingdom shall attach and be payable upon all such bills as shall be paid, indorsed, transferred, or otherwise negotiated within the United Kingdom wheresoever the same may be payable, and the said duties shall be denoted by adhesive stamps, to be provided by the Commissioners of Inland Revenue for that purpose, and to be affixed to such bills as hereinafter directed.

Bills purporting to be drawn abroad deemed for the purposes of this Act to be so drawn.

Sect. 4.—Every bill of exchange which shall purport to be drawn at any place out of the United Kingdom shall for all the purposes of this Act be deemed to be a foreign bill of exchange drawn out of the United Kingdom, and shall be chargeable with stamp duty accordingly, notwithstanding that in fact the same may have been drawn within the United Kingdom.

The holder of a bill drawn out of the United Kingdom to affix an adhesive stamp thereon before negotiating it.

Penalty for negotiating such bill without a stamp affixed or neglecting to cancel such stamp.

Sect. 5.—The holder of any bill of exchange drawn out of the United Kingdom, and not having a proper adhesive stamp affixed thereon as herein directed, shall, before he shall present the same for payment, or indorse, transfer, or in any manner negotiate such bill, affix thereon a proper adhesive stamp for denoting the duty by this Act charged on such bill; and the person who shall indorse, transfer, or negotiate such bill shall, before he shall deliver the same out of his hands, custody, or power, cancel the stamp so affixed by writing thereon his name or the name of his firm and the date of the day and year on which he shall so write the same, to the end that such stamp may not be again used for any other purpose; and if any person shall present for payment, or shall pay or indorse, transfer or negotiate any such bill as aforesaid whereon there shall not be such adhesive stamp as aforesaid duly affixed, or if any person who ought as directed by this Act to cancel such stamp in manner aforesaid shall refuse or neglect so to do, such person so offending in any such case shall forfeit the sum of fifty pounds; and no person who shall take or receive from any other person any such bill as aforesaid, either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon, or to make the same available for any purpose whatever, unless at the time when he shall so take or receive such bill there shall be such stamp as aforesaid affixed thereon and cancelled in the manner hereby directed.

Penalty for drawing and issuing, or transferring or negotiating bills purporting to be drawn in a set, and not drawing the whole number of the set.

Penalty on taking or receiving such bills.

Sect. 6.—If any person shall within the United Kingdom draw and issue any bill of exchange payable out of the United Kingdom purporting to be drawn in a set, and shall not draw and issue on paper duly stamped as required by law the whole number of bills which such bill purports the set to consist of, or if any person shall within the United Kingdom transfer or negotiate any such bill of exchange as aforesaid purporting to be drawn in a set, and shall not at the same time transfer or deliver on paper duly stamped as aforesaid the whole number of bills which such bill purports the set to consist of, every such person so offending in any of such cases shall forfeit the sum of one hundred pounds; and if any person shall take or receive in the United Kingdom any such bill as aforesaid, either in payment or as a security or by purchase or otherwise, without having transferred or delivered to him duly stamped as aforesaid the whole number of bills which such bill purports the set to consist of, he shall not be entitled to recover on any such bill, or to make the same available for any purpose whatever.

Unstamped drafts on bankers not to be circulated beyond fifteen miles of the

Sect. 7.—And whereas, under and by virtue of certain Acts relating to stamp duties, certain drafts, or orders for the payment of any sum of money to the bearer on demand, drawn upon any banker or person acting as a banker residing or transacting the business of a banker within fifteen miles of the place where such drafts or orders are issued, are exempted from all stamp duty, and it is expedient to prevent the negotiating or circulating of such drafts or orders un-

stamped at any place beyond the distance of fifteen miles from the place where the same are made payable: Be it enacted, That no such draft or order as aforesaid shall, unless the same be duly stamped as a draft or order, be remitted or sent to any place beyond the distance of fifteen miles in a direct line from the bank or place at which the same is made payable or be received in payment, or as a security, or be otherwise negotiated or circulated at any place beyond the said distance; and if any person shall remit or send any draft or order not duly stamped as aforesaid to any place beyond the distance aforesaid, or shall receive the same in payment or as a security, or in any manner negotiate or circulate the same at any such last-mentioned place, he shall forfeit the sum of fifty pounds.

place where made payable.

Penalty on persons offending.

Sect. 8.—Provided always, That it shall be lawful for any person who shall receive any such draft or order as aforesaid at any place within the said distance of fifteen miles from the bank or place at which the same is made payable, which draft or order shall have been lawfully issued unstamped, to affix thereto a proper adhesive stamp, and to cancel such stamp by writing thereon his name or the initial letters of his name, and thereupon such draft or order may lawfully be received and negotiated at any place beyond the distance aforesaid, anything herein contained notwithstanding.

Drafts lawfully issued unstamped may by affixing thereto an adhesive stamp be negotiated beyond fifteen miles.

Sect. 9.—And whereas an Act was passed in the seventeenth year of the reign of King George the Third, chapter thirty, for restraining the negotiation of promissory notes and inland bills of exchange under a limited sum: Be it enacted, That the said Act, and any Act or Acts continuing or perpetuating the same, shall, so far as they respectively extend or may be deemed or construed to extend to any draft on a banker for payment of money held for the use of the drawer, be and the same are hereby repealed.

Provisions of 17 G. 3, c. 30, as extends to drafts on bankers repealed.

Sect. 10.—The adhesive stamps provided by the Commissioners of Inland Revenue for denoting the duty of one penny payable on receipts and on drafts or orders for the payment of money to the bearer or to order on demand respectively may lawfully be used for the purpose of denoting the like amount of duty either on a receipt or on such draft or order as aforesaid, without regard to the special appropriation thereof for the other of such instruments by having its name on the face thereof, anything in any Act or Acts contained to the contrary notwithstanding.

Adhesive stamps denoting the duty of one penny may be used for receipts or drafts without regard to their special appropriation.

Sect. 11.—And whereas an Act was passed in the seventh and eighth years of her Majesty's reign, chapter thirty-two, to regulate the issue of bank notes; and an Act was passed in the eighth and ninth years of her Majesty's reign, chapter thirty-eight, to regulate the issue of bank notes in Scotland; and another Act was passed in the last-mentioned years, chapter thirty-seven, to regulate the issue of bank notes in Ireland; and in order to prevent evasions of the regulations and provisions of the said respective Acts it is expedient to define what shall be deemed to be bank notes within the meaning thereof respectively: Be it enacted, That all bills, drafts, or notes (other than notes of the Bank of England) which shall be issued by any banker or the agent of any banker for the payment of money to the bearer on demand, and all bills, drafts, or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without endorsement, or without any further or other endorsement than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts, or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the said three several Acts last mentioned, and within all the clauses, provisions, and regulations thereof respectively.

What shall be deemed bank notes within the meanings of 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 38 & 37.

Sect. 12.—All bills, drafts, and notes which by or under this Act, or the said

All bills, drafts,

and notes deemed bank notes under the above-recited Acts liable to stamp duties, &c.

three several Acts last mentioned, or any of them respectively, are declared or deemed to be bank notes, shall be subject and liable to the stamp duties, and composition for stamp duties, imposed by or payable under any Act or Acts in force upon or in respect of promissory notes for the payment of money to the bearer on demand; and all clauses, provisions, regulations, penalties, and forfeitures contained in any Act or Acts relating to the issuing of such promissory notes, or for securing the said stamp duties and composition respectively, or for preventing or punishing frauds or evasions in relation thereto, shall respectively be deemed to apply to all such bills, drafts, and notes as aforesaid, and to the stamp duties and composition payable upon or in respect thereof, anything in this Act, or any other Act or Acts, to the contrary notwithstanding.

Exemption from receipt duty of letters inclosing bills, &c., repealed.

Sect. 13.—And whereas under and by virtue of certain Acts relating to stamp duties, letters by the general post acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money are exempted from the stamp duty granted and imposed on receipts or discharges given for or upon the payment of money: Be it enacted, That the said exemption shall be and the same is hereby repealed.

Receipts for money paid to the Crown exempted.

Sect. 14.—And whereas under and by virtue of the laws in force the stamp duty on receipts given for or upon the payment of money to or for the use of her Majesty, her heirs or successors, is made payable by the person requiring any such receipt: Be it enacted, That all such receipts as last mentioned shall be and the same are hereby exempted from stamp duty.

13 & 14 Vict. c. 97.

16 & 17 Vict. c. 63.

Sect. 15.—And whereas by an Act passed in the thirteenth and fourteenth years of her Majesty's reign, chapter ninety-seven, certain reduced rates of stamp duty were granted and made payable under the head or title of "Duplicate or Counterpart" in the schedule thereto annexed: And whereas by an Act passed in the last session of Parliament, chapter sixty-three, certain stamp duties were granted and made payable upon conveyances, charters, dispositions, and contracts described under the head or title of "Conveyance" in the schedule to the said last-mentioned Act, but no provision is made for charging the duplicates or counterparts of the said conveyances, charters, dispositions, and contracts with the said reduced duties, and it is expedient to give such relief in that respect as hereinafter mentioned: Be it enacted, That it shall be lawful for the Commissioners of Inland Revenue, and they are hereby required, upon production to them of any such conveyance, charter, disposition, or contract duly stamped, and of the duplicate or counterpart thereof stamped for denoting the amount of duty chargeable upon a duplicate or counterpart under the said Act of the thirteenth and fourteenth years of her Majesty, to stamp the said duplicate or counterpart with the particular stamp directed by the said last-mentioned Act to be impressed upon a duplicate or counterpart for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument; and if the said duplicate or counterpart shall be stamped with any *ad valorem* stamp duty of greater amount than the amount of stamp duty so chargeable as aforesaid on a duplicate or counterpart, the said Commissioners shall allow and repay such excess of stamp duty, and rectify the stamps accordingly, and thereupon such duplicate or counterpart shall be deemed to be duly stamped.

Relief to persons who have made duplicates of conveyances described in 16 & 17 Vict. c. 63.

Deeds made for several valuable considerations to be chargeable in respect of each.

Sect. 16.—And where any conveyance, charter, disposition, or contract described in the schedule to this Act shall be made partly in consideration of such annual sum as in the said schedule is mentioned, and partly in consideration of a sum of money or stock as mentioned under the head or title of "Conveyance" in the schedule to the said Act of the thirteenth and fourteenth years of her Majesty, such conveyance, charter, disposition, or contract shall be chargeable with the *ad valorem* stamp duties granted by the said Acts respectively in respect of each of the said considerations; and in any case where any deed or instrument which shall be chargeable with any *ad valorem* stamp duty in respect of any sum of money yearly or in gross or any stock or security therein

mentioned shall be made also for any further or other valuable consideration, such deed or instrument shall be chargeable (except where express provision to the contrary is or shall be made in any Act of Parliament) with such further stamp duty as any separate deed or instrument made for such last-mentioned consideration alone would be chargeable with, except progressive duty.

Commissioners of Inland Revenue, before assessing the duty upon any deed, may require proof that the facts upon which the duty depends are truly stated.

Sect. 17.—And to prevent fraud and evasion of stamp duty in any case where application is made to the Commissioners of Inland Revenue to assess and charge the stamp duty to which any deed or instrument is liable, or to impress on any deed or instrument the particular stamp provided to denote the payment of the full and proper duty on the same or on any other deed or instrument, or that any deed or instrument is not liable to any stamp duty, it shall be lawful for the said Commissioners to require such evidence by affidavit as they may deem necessary in order to show to their satisfaction the quantity of words contained in any such deed or instrument, and whether or not the consideration, or any definite or certain sum or sums of money, stock, or other valuable matter or thing capable of being ascertained and set forth, or any other facts, upon the full or proper statement of any of which matters and things in such deed or instrument the stamp duty which shall be or which ought to be payable thereon shall in any measure depend, is or are truly and fully set forth therein; and it shall be lawful for the said Commissioners and their officers in any case to refuse to impress on any such deed or instrument, or any duplicate or counterpart respectively, the particular stamp to denote the payment of the full and proper duty as aforesaid, except on payment of the full stamp duty which would be chargeable on such deed or instrument if all or any of such matters and things aforesaid had been truly set forth therein.

The affidavit not to be used for any other purpose.

Sect. 18.—Provided, That no such affidavit shall be used against any person making the same in any proceeding whatever, except only in any inquiry as to the stamp duty with which such deed or instrument is chargeable, and every such person shall, upon payment of such full stamp duty as aforesaid, be relieved from any penalty, forfeiture, or disability he may have incurred by reason of the omission to state truly in such deed or instrument any of the facts, matters, and things aforesaid.

48 G. 3, c. 149.

Sect. 19.—Whereas by an Act passed in the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine, certain penalties and disabilities were imposed upon the parties to any deed or instrument of conveyance of property upon sale, wherein the full purchase or consideration money directly or indirectly paid or secured or agreed to be paid should not be truly expressed and set forth, and also upon the attorney, solicitor, writer to the signet, or other person employed in or about the preparing of any such deed or instrument: And whereas the sale of a trade or business, or the goodwill thereof, has been erroneously considered by some persons not to be a sale of property within the meaning of the Acts imposing *ad valorem* stamp duties on the conveyance thereof, and the instruments whereby property of that description, or whereby certain messuages, lands, or other property wherein or whereupon such trade or business has been carried on, has or have been in such cases assigned, transferred, or otherwise conveyed to or become vested in a purchaser may not have been stamped with the full and proper duties with which the same were by law chargeable, and in some instances the purchase or consideration money has been omitted to be fully and truly expressed and set forth as required by law in such instruments, by reason whereof the parties to such instruments, and the attorney, solicitor, writer to the signet, or other person employed in or about the preparing of the same, may have incurred the penalties, forfeitures, and disabilities in that behalf mentioned in and imposed by the said Act of the forty-eighth year of King George the Third, and it is expedient that they should be relieved therefrom, and that such instruments should be rendered available in evidence: Be it enacted, That in any such case as aforesaid the parties to any such instrument made and bearing date on or before the

Indemnity from penalties for

omitting to state the full purchase-money in assignments on the sale of goodwill.

fifteenth day of June one thousand eight hundred and fifty-four, and every person employed in or about the preparing of the same, shall be and they are hereby declared to be respectively freed, discharged, and indemnified from and against any penalties, forfeitures, and disabilities contained in or imposed by the said last-mentioned Act which may have been incurred by reason of any omission to express or set forth in any such instrument the full and true purchase or consideration money upon the sale of the property thereby conveyed, transferred, assigned, or assured, or vested in the purchaser; and all such instruments shall be available in evidence notwithstanding the full and proper *ad valorem* duties which ought to have been paid in respect of the purchase or consideration money therein expressed for the conveyance, transfer, or assignment of any such trade, business, or goodwill shall not have been paid and denoted thereon.

Stamp duty on licences to pawnbrokers in Dublin reduced.

Sect. 20.—And whereas it is expedient to reduce the stamp duty now payable on licences to pawnbrokers in Dublin: Be it enacted, That the stamp duty of fifteen pounds now payable on a licence to be taken out yearly for exercising the trade or business of a pawnbroker within the city of Dublin, or the circular road surrounding the same, shall be reduced to the sum of seven pounds ten shillings.

Contracts to serve as artificers, &c., in the colonies exempted.

Sect. 21.—All indentures of apprenticeship, bonds, contracts and agreements entered into in the United Kingdom for or relating to the service in any of her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer shall be and the same are hereby exempted from all stamp duty.

Public maps and documents not to be liable to stamp duty by reason of their being referred to in deeds or writings.

Sect. 22.—And whereas by an Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, and by the said Act of the thirteenth and fourteenth years of her Majesty respectively, certain stamp duties were imposed upon any schedule, inventory, or catalogue containing the matters and things in the said Acts respectively mentioned, which should be referred to in or by and be intended to be used or given in evidence as part of or as material to any instrument charged with stamp duty, but which should be separate and distinct therefrom, and not endorsed on or annexed thereto, and doubts are entertained whether the said duties extend to certain documents and writings of a public character hereinafter mentioned: For the removal of such doubts, be it declared and enacted, That the said last-mentioned stamp duties shall not extend or be deemed to have extended to any public map, plan, survey, apportionment, allotment, award, or other parochial or public document or writing whatsoever made under or in pursuance of any Act of Parliament, and deposited or kept for reference in any registry, or in any public office, or with the public books, papers, or writings of any parish, by reason of any such document or writing as aforesaid being referred to in or by any deed or instrument whatever, provided that such document or writing be not endorsed on or annexed to such deed or instrument.

Leases for a period less than a year to be chargeable with stamp duty on the rent reserved.

Sect. 23.—And whereas by the said Act of the thirteenth and fourteenth years of Her Majesty and this Act respectively certain *ad valorem* stamp duties are granted and imposed upon leases or tacks of any lands, tenements, hereditaments, or heritable subjects at a yearly rent, and doubts are entertained whether the said duties extend to any lease or tack for any term or period less than a year: for the removal of such doubts, be it enacted, That where any lease or tack of any lands, tenements, hereditaments, or heritable subjects shall be made for any term or period less than a year at a rent reserved or payable for the same, such lease or tack shall be chargeable with the same *ad valorem* duty as a lease or tack at a yearly rent of the same amount as the sum so reserved or payable.

Allowance on the purchase of

Sect. 24.—And in order to encourage the purchase of stamps for drafts, bills, and notes of the several rates and denominations hereinafter mentioned, and to

facilitate the distribution and supply thereof, there shall be granted and allowed to every person who at one and the same time shall produce at the office of the Commissioners of Inland Revenue in London or Dublin, paper, to be stamped with such stamps or any of them to the amount of five pounds in the whole or shall purchase such stamps or any of them to the like amount at the office of the said commissioners in London, Edinburgh, or Dublin, or of any distributor or sub-distributor of stamps at any place not within the distance of ten miles from the said offices respectively the allowance following; (that is to say,) on stamps for denoting any rate of duty not exceeding one shilling on bills of exchange, drafts, or orders, or promissory notes, an allowance after the rate of seven and a half *per centum* on the amount of such stamp duties respectively; provided that no allowance shall be made on any fraction of a pound; which said allowances are in lieu of any allowance payable on stamps of the like rates and denominations under any other Act or Acts in force.

stamps not exceeding the rate of 1*s.* duty for drafts, bills, and notes.

Sect. 25.—And in consideration that such allowance as aforesaid is by this Act granted on the purchase of stamps of the several rates and denominations aforesaid, it shall not be lawful for any person on the sale of any such stamp to make any charge for the paper whereon the same is impressed; and if any person upon the sale of any stamp denoting any rate of duty not exceeding one shilling for any bill of exchange, draft or order, or promissory note, shall make any charge for the paper whereon the same is impressed, or under any colour or pretence whatever demand or receive a greater price or sum than the amount of the stamp duty, he shall forfeit the sum of ten pounds.

No charge to be made for paper on sale of bill or note stamps where the rate of duty does not exceed 1*s.*

Sect. 26.—Where any person shall be possessed of any stamps rendered useless by this Act, it shall be lawful for the Commissioners of Inland Revenue, on application to them or to their proper officer in that behalf, at any time on or before the fifth day of April one thousand eight hundred and fifty-five to cancel and make allowance for the same as in the case of spoiled stamps, after deducting the discount granted and allowed by law on the purchase of stamps of the like description.

Allowance for stamps rendered useless by this Act.

Sect. 27.—Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding, although it may not have the stamp required by law impressed thereon or affixed thereto.

Instruments admissible in evidence, though not properly stamped.

SCHEDULE.

For the duties contained in the Schedule annexed to this Act, see the foregoing Tables, under the heads BILL OF EXCHANGE, PROMISSORY NOTE, LEASE, CONVEYANCE, COPYHOLD (Licence to demise).

Common Law Procedure Act, 1854.

17 & 18 Vict. c. 125.

PROVISIONS RELATING TO STAMP DUTIES.

Provision as to unstamped documents at the trial.

Sect. 28.—Upon the production of any document as evidence at the trial of any cause it shall be the duty of the officer of the court whose duty it is to read such document to call the attention of the judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, shall not be received in evidence until the whole or (as the case be) the deficiency of the stamp duty, and the penalty required by statute, together with the additional penalty of one pound, shall have been paid.

Officer of the court to receive the duty and penalty.

Sect. 29.—Such officer of the court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty payable upon or in respect of such document, and of the penalty required by statute, and of the additional penalty of one pound, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall, at the end of each sittings or assizes (as the case may be), duly make a return to the Commissioners of the Inland revenue of the monies, if any, which he has so received by way of duty or penalty, distinguishing between such monies, and stating the name of the cause and of the parties from whom he received such monies, and the date, if any, and description of the document for the purpose of identifying the same; and he shall pay over the said monies to the Receiver-General of the Inland Revenue, or to such person as the said Commissioners shall appoint or authorize to receive the same; and in case such officer shall neglect or refuse to furnish such account, or to pay over any of the monies so received by him as aforesaid, he shall be liable to be proceeded against in the manner directed by the eighth section of an Act passed in the session of Parliament holden in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the Stamp Duties;" and the said Commissioners shall, upon request, and production of the receipt hereinbefore mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid: Provided always, that the aforesaid enactment shall not extend to any document which cannot now be stamped after the execution thereof on payment of the duty and a penalty.

13 & 14 Vict. c. 97.

No document under this Act to require a stamp.

Sect. 30.—No document made or required under the provisions of this Act shall be liable to any stamp duty.

No new trial for ruling as to stamp.

Sect. 31.—No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

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